

TOWN OF UNION PLAN COMMISSION MEETING

Minutes for August 30, 2007

The Town of Union Plan Commission meeting was called to order on Thursday, August 30, 2007 at the Eager Free Public Library, 39 W. Main Street, Evansville at 7:03 p.m. by Alvin Francis, Chairman. Members present included Doug Zweizig, Kim Gruebling, Mike Exum, Alvin Francis, Marty Johnson, Eric Larsen and Rich Templeton. Also in attendance: Town Engineer Greg Hofmeister, Town Attorney Matt Dregne, and Building Inspector Bob Fahey.

Review and Approval of July 26, 2007 Plan Commission Minutes

Chairman Alvin Francis noted corrections on pages 3 (change "...remaining land between..." to "...remaining road frontage between..."), 4 (clarification of name – John Diefenthaler, landowner, Pleasant Prairie Road), and 6 (roll call vote did not include Alvin Francis, as he had recused himself, therefore motion to approve carried by a 5-1 vote). Kim Gruebling noted misspelling of his name on page 7.

Motion to approve minutes with corrections noted by Eric Larsen. Second by Alvin Francis. Motion carried.

Public Hearing: To discuss local regulation of Large Wind Energy Systems, review Wind Energy Ordinance Development Process, and recommend citizens to be appointed by Town Board to the Citizens Advisory Committee.

Chairman Francis recused himself due to conflict of interest; Vice-Chair Doug Zweizig chaired the discussion. Zweizig explained the intention of the discussion as a hearing for the public. Eric Larsen asked for a definition of "citizen" in the process outline; Attorney Matt Dregne stated that he would consider "citizen" any resident of the Town of Union, but clarified that others outside of town residents could be members of the Citizens Advisory Committee if the Plan Commission and/or Town Board so chose.

Public hearing opened at 7:08 pm.

Resident Bill Thomas indicated interest in being a member of the Citizens Advisory Committee. Interest noted by Commission.

Resident Doug Lee indicated interest in being a member of the Citizens Advisory Committee. Interest noted by Commission.

Matt Gaboda, City of Evansville resident, voiced his opinion that membership on the Committee should be limited to residents of Town of Union first, individuals living outside of the Town should be considered only if not enough Town residents are interested to make up committee.

Resident Renee Exum volunteered to participate on the Committee in the capacity of recording secretary, taking notes and recording minutes.

Resident Jim Bembinster indicated interest in being a member of the Citizens Advisory Committee. Interest noted by Commission.

Vice Chair Zweizig read the list of residents who had indicated interest in participating in the Committee:

Jim Bembinster
Cathy Bembinster
Bill Thomas
Scott McElroy
Susan Pestor

Marion Tong
Shane Ringhand
Martha Johnson
Michael Leeder

Alvin Francis submitted the name of Jim Geithbrock; Doug Zweizig submitted the name of Tom Alisankus.

Scott McElroy felt that Mike Exum should be a member of the Citizens Advisory Committee, due to his work thus far on researching the wind energy topic. The decision had not yet been made as to whether Plan Commission members would be a part of the Committee; ultimately the decision is up to the Plan Commission and Town Board.

Discussion regarding size of Citizen Advisory Committee. Kim Gruebling suggested 7-9 individuals, Kendall Schneider indicated that Tom Alisankus had recommended 5-7 members. Gary Haltaufderheide questioned whether Committee members would or should be compensated. Jim Bembinster stated that those citizens whom he had spoken to felt participation on the Committee should be voluntary, and members need not be compensated for their time. Randy Shottliff recommended that engineers, other experts speak to the Committee; Scott McElroy agreed that their participation would be important.

Public hearing closed at 7:20 p.m.

Attorney Dregne outlined key issues to be decided: number of members on Committee; whom will designate committee chair, secretary – Town Board or Committee?
Mike Exum felt it would be difficult for the Committee secretary to participate in the Committee and take accurate minutes, therefore that position should be additional to the base committee of 5-7 members. Should not be an active, voting member.
Rich Templeton stressed the need for the number of members to be uneven, to avoid tie votes. Consensus is that the Committee should be made up of seven members.

Mike Exum felt the Plan Commission should recommend a chair so the committee can hit the ground running, and not spend time making that decision. Kim Gruebling agrees, that process has worked in the past. Consensus is that Plan Commission will recommend to the Town Board that Tom Alisankus be appointed chair. Consensus is Plan Commission will recommend to the Town Board that Renee Exum be appointed as secretary, a non-voting member.

Criteria for remaining 6 members?

Mike Exum felt that it must be made clear that all members must be active participants, and Committee should have right to remove members if meetings are missed, or are otherwise not actively participating.

Plan Commission members on Citizen Advisory Committee?

Attorney Dregne clarified that the Citizen Advisory Committee meetings will be public meetings, and Plan Commission members can participate as members of the public. The Committee meetings would be subject to open meeting law, notice of meetings would be given so public can attend and participate. He felt the reason for the

Committee is to take the burden off the Plan Commission, but it is common to include a member of the Plan Commission or similar board, to help bridge the gap between the two groups and represent the Plan Commission. However, it does not have to be done that way. Plan Commission member could be an ex-officio non-voting member, who must attend meetings and participate in discussions, but would have no voting rights.

What would be the mode of communication between Citizens Advisory Committee and Plan Commission?

Attorney Dregne outlined several options: the Citizens Advisory Committee could report to the Plan Commission on a monthly basis, or the Plan Commission could be made available to the Citizens Advisory Committee for questions as needed.

Attorney Dregne also noted that all Citizens Advisory Committee meeting notices should include a statement similar to: "it is possible that a quorum of Plan Commission members would be present but would not be voting on agenda items." Attorney Dregne will discuss notice language with Clerk Ylvisaker.

Marty Johnson felt it was important that a Plan Commission member should be on the Committee as a voting member. He too would like to see Mike Exum as the Plan Commission member on the Committee, as he has done a great deal of work in this area already. Mike Exum stated he would agree to represent the Plan Commission on the Committee.

Eric Larsen asked if Exum would then do the reporting to the Plan Commission? It was decided that the Committee chair would make that decision. Doug Zweizig stated that he would request that either the chair or designee report to the Plan Commission at their monthly meetings.

Mike Exum suggested contacting those appointed tonight who are not here to be sure that they are interested, and can make time commitment. It was estimated by the Plan Commission that the time commitment for Citizen Advisory Committee members would be between 15-20 hours per month.

The meeting was then opened up to statements from those citizens in attendance who wished to be a part of the Citizen Advisory Committee, describing why they feel they would be good candidates for the Committee. Following this, each member of the Plan Commission will submit 5 names and those receiving the most votes will be recommended for appointment.

Jim Bembinster: Wind turbines will personally affect him; he realizes we have to do something to create renewable energy, but wants to be sure we are doing the right thing. Has done over 100 hours of research with Cathy Bembinster & Scott McElroy on this issue, and has supplied this information to the Town Chairman.

Cathy Bembinster: Has already committed over 100 hours to researching this issue, wants to get the issue resolved in a timely manner. Has gone to related meetings in Magnolia and Chilton, and visited wind farms. Is committed to doing it right.

Scott McElroy: Interested because wind turbines may be located close to him. Has visited wind farms, put in a lot of time, talked with people across the state. Knows it's a

big project, but the outcome is forever and will affect everyone and therefore must be done properly.

Susan Pestor: Proposed wind turbine sites will be close to her property and her children. Committed to putting in time required to research the issue and make good decisions.

Marty Johnson spoke for Martha Johnson: Was involved in planning and development at Rock County level for 20 years. Is his stepmother.

Bill Thomas: Feels others who have spoken are more qualified than he, will withdraw his name from consideration.

Scott McElroy spoke for Mike Leeder: Is an electrical engineer, lives close to a possible wind turbine site.

Doug Lee: Withdrawing name, feels others will represent him.

Jim Bembinster spoke for Dave Geithbrock: Both Dave and his wife are interested in being on committee. His wife is a research scientist, he is marine biologist. Have children, are busy and would be willing to be involved even if not as members of the Committee.

Attorney Dregne brought up the issue of those people appointed to the Citizens Advisory Committee being considered "local public official" according to definition in State statute. This is due to the fact that the members are appointed to the Committee. Therefore, Committee members are required to adhere to code of ethics, including conflict of interest. He cited an example as the Plan Commission Chairman, who recuses himself from participation in meetings when wind energy is an issue, as his property is a proposed site for wind turbines. Along these same lines, it could be conflict of interest to be on the Citizens Advisory Committee for those individuals living close to possible wind turbine sites. The State Ethics Board states that if a public official will be affected in a way that is substantially different than other citizens, especially if monetary, there is a potential for conflict of interest. The Plan Commission should consider this when appointing Committee members.

Doug Lee asked Attorney Dregne if the members are only being recommended at this point, is conflict of interest an issue now?

Attorney Dregne explained that in many cases, it is hard for lawyers to determine conflict of interest. He doesn't have enough information about the citizens interested in participation in the Committee to make a determination on conflict of interest, but would say that if someone lives adjacent to a property potentially sited for wind energy, it is a conflict.

Mike Exum clarified that no application has been made to the Town at this point regarding wind energy sites. All locations being referred to by citizens and others are speculation at this time. Attorney Dregne stated that given that fact, there is no conflict of interest for any citizen at this time. Alvin Francis confirmed that EcoEnergy has held meetings showing maps of locations of possible wind energy sites. Mike Exum stated that EcoEnergy has also put forth that there is no negative impact on property values

related to wind energy location. Attorney Dregne clarified that financial harm and financial gain are treated the same by the law when dealing with conflict of interest.

Eric Larsen felt that citizens are now educated about the issue of conflict of interest, and can remove themselves from consideration for appointment if they feel there is a conflict.

Mike Exum addressed the issue of precedent: the issue of conflict of interest was not addressed when the Smart Growth Committee was formed, and there were many people involved who had possible financial impacts from the outcome of the Smart Growth Committee decisions. Asked if health and safety concerns constitute a conflict of interest? Attorney Dregne was unable to answer that question without further research.

Interested parties were given the opportunity to remove themselves from consideration. No individuals chose to remove themselves.

Randy Shottliff clarified that any citizen could come to the meetings and voice opinions, do work, etc. they could, but would not have a vote.

A ballot vote was taken.

Individuals chosen: Jim Bembinster, Cathy Bembinster, Scott McElroy, Susan Pestor, Mike Leeder.

Motion to approve the above individuals for recommendation to the Town Board for appointment to the Citizens Advisory Committee by Eric Larsen. Second by Marty Johnson. Motion passed by unanimous voice vote. Clerk Ylvisaker will contact those not in attendance (Mike Leeder).

Doug Zweizig made motion to create a seven member Citizens Advisory Committee, with one position being held by a Plan Commission member, plus one non voting member to perform secretary duties; recommend to Town Board to appoint Tom Alisankus as Committee Chair, Renee Exum as secretary, Mike Exum as Plan Commission representative; Marion Tong as alternate; Chair or designee to report to Plan Commission monthly. Second by Marty Johnson. Motion passed by unanimous voice vote.

Next step: Town Board will review Plan Commission recommendation at their regular monthly meeting, Thursday, September 6, 2007.

Discussion of draft of Small Wind Energy Ordinance with changes recommended by Town Attorney.

Attorney Dregne reviewed conditional vs. permitted use, and recommends permitted use if conditions are met. Felt it would be a permitted use in all zoning areas. Recommended that Plan Commission review if small wind energy should be permitted in all zoning districts, or if it should be a conditional use in some zoning districts.

Alvin Francis clarified definition of wind energy system as having a nameplate capacity of 100 kilowatts or less, has a total height of 170 feet or less, and is primarily used to generate energy.

Mike Exum: In a rural residential, if the height of a wind tower was such that it would cross onto neighbors land if it fell, could the owner get approval from neighbor to put up the tower? Attorney Dregne stated that if the ordinance lays out a setback requirement, an agreement between neighbors bypassing the setback requirement would not be allowed unless a variance was requested and approved. The setback requirement could be met by purchasing an easement. Mike Exum wondered if this idea should be entertained, neighboring property agreements, etc. Attorney Dregne stated that the type of easement to be obtained would need to be determined by the Plan Commission. Kim Gruebling asked if changes to the Small Wind Energy Ordinance would weaken the Large Wind Energy Ordinance? Felt there should be consistencies in the ordinances. Mike Exum felt that a difference should be recognized between property which has buildings, etc on it vs. properties that consist only of land. Kim Gruebling is of the opinion that neighbor agreements shouldn't be allowed under any circumstance. Mike Exum questioned how the Plan Commission has the authority to tell people that if they consent regarding setbacks they can't make agreements. Bob Fahey agrees with Kim, purchasers may not know about existing easements, this can cause problems with the property down the line. Rich Templeton agrees, property changes hands more frequently today than it used to. Attorney Dregne stated that not allowing easements, doesn't mean people can't buy and sell property as a way to get around the easement issue. Marty Johnson stated that the Board of Adjustment exists for people to request variances.

Kim Gruebling feels a moratorium on this issue may be appropriate, as there is one on large wind energy. Questions what will happen in 20 years, when the small wind energy equipment is no longer used? The Town must be able to enforce removal of equipment if needed.

Mike Exum questioned what the process would be if there was a moratorium and a citizen wanted to put up a small wind energy site? Attorney Dregne outlined the process: first look at the property zoning, then state statute. Bob Fahey stated that there is currently nothing in the zoning to restrict installation of small wind energy sites. If a site was put up, owners could keep the site as non-conforming use if zoning/ordinance was adopted at a later time.

Kim Gruebling recommends a moratorium until August 2008 as was adopted for large wind energy.

Alvin Francis requested clarification that this ordinance includes provisions for noise and shadow flicker. Mike Exum clarified it is on page 2 under "Sound" heading. Mike will take questions and add to document, please email to him. Alvin would like Greg Hofmeister to review the document as well; Matt will send copy to Greg (was later provided to Greg at meeting).

Discussion will be extended to next meeting.

Public Hearing: Review and approval of extension of existing Conditional Use Permit held by Gary and Karen Larson, 9123 Territorial Rd., Evansville, WI 53536 d/b/a Enchanted Valley Gardens to sell agricultural and agricultural related products not produced on the A2 parcel of land. Current Conditional Use Permit expires August 31, 2007.

Public hearing opened at 8:37 p.m.

Karen Larson was in attendance representing herself.

Public hearing closed at 8:38 p.m.

The conditional use permit issued was historically open-ended with this property. Rich Templeton thinks it is a good idea to review the permit on a regular basis, Marty Johnson agrees.

Marty Johnson made motion to approve the conditional use permit for Enchanted Valley Gardens for 3 years (August 31, 2010). Second by Rich Templeton.

Attorney Dregne clarified for the Plan Commission that once a conditional use permit is issued, this means that the property in question has met the requirements of the zoning code, and property rights are then attached. If the Plan Commission decides not to renew a conditional use permit (can be revoked if property owners are not operating in compliance with the permit), he believes the Plan Commission will run into a problem. Recommends that when a conditional use permit is issued, the Commission must make a good written record of what the property owner intends to do, what will be allowed, what conditions will be required to be met, etc. in order to have a good basis for non-renewal if necessary. Warns that the language of the permit can be too open-ended, which can allow for more than is intended. This is especially important if a conflict with neighbors could be foreseen. There should be a mechanism in ordinance to revoke if conditional use permit conditions are not met and expectations not followed. Mike Exum asked if conditional use follows the property if it is sold? Attorney Dregne explained that yes, issuing the conditional use permit is essentially changing the zoning for that property and that gives property rights to the owner.

Motion passed by unanimous voice vote. Mike Exum recused himself from participating in the vote.

Public Hearing: Donna Garvoille, 16008 W. Holt Rd., Brooklyn, WI 53521 requests a conditional use permit to separate off a 5 acre parcel including existing farm buildings and home from its existing A1, 53.7 acre parcel (#6-20-20) located in the SW ¼, NE ¼ of Section 4 for the purpose of selling the farmette. Owner also requests a land division to separate off a 7.48 acre parcel from its existing A1, 53.7 acre parcel (#6-20-20) and rezoning of the proposed lot from A-1 to A-3. This lot is currently used as pasture.

Public hearing opened at 8:47 p.m.

Doug Zweizig asked if there was a reason for putting two land divisions on one application? Bob Fahey indicated that he had discussed the situation with Linda O'Leary, there is a small cost savings, both divisions could be done at one meeting. Stated that an option would be to do two applications, charge one fee. Attorney Dregne stated that applicants could do one application, the requested divisions could then be made two items on the meeting agenda to allow for separate approvals/denials/conditions.

Regarding the request for separation of farm buildings and conditional use permit. Alvin Francis cited ordinance allowing a separation.

Attorney Dregne asked: is there a need for a land separation? There will be 3 resulting parcels, largest one over 35 acres. Bob Fahey confirmed there will be no resulting rezoning.

Scoring sheets were discussed; Kim Gruebling felt that if there are inconsistencies between Plan Commission members' scoring, it should be discussed and reconciled. Changes made to scoring of soil type, distance from other buildings.

Alvin Francis asked for clarification regarding why the farmland to the east was included in the parcel? Donna Garvoille stated the reason was to square off the parcel, and for ease of erecting fences for horse pastures, etc. Alvin asked for clarification regarding why the extra land next to existing buildings was included in the parcel? Donna Garvoille stated that her realtor told her the parcel would be easier to sell with 5 acres attached than with 3 acres.

The parcel will remain A1, non-conforming. Marty Johnson questioned why the zoning would not be changed to A3? Bob Fahey explained the county prefers the parcel remain A1 with conditional use, to avoid spot-zoning. Marty feels past practice has been to rezone to A3; Alvin disagrees in the case of land divisions with existing farm buildings.

Doug Zweizig asked about access to remaining large parcel, if a house is built on it? Bob Fahey clarified that a house could be built on the parcel, but he does not believe that is the intent at this time. The remaining 41 acre parcel will have access, through an easement.

Eric Larsen asked for clarification of the purpose of Lot 2, 7.48 acres? It is to create another buildable lot.

Greg Hofmeister stated that as a neighbor of the property, he is in favor of both requested land divisions. Additionally, he felt that it makes sense to have a line of similar parcels on the road. Regarding requested Lot 2, he feels that the cost of services for the Town related to this lot are non-existent as the lot already has services. Stated that the land is not farmable, and is currently pastured for that reason.

Randy Shottliff stated that it was his opinion that in the past, parcels with similar amounts of buildings were divided off in 5 acre parcels. Alvin Francis disagrees. Randy felt it was not unreasonable to have a 5 acre parcel considering the number of buildings included. Marty Johnson agrees with Randy. Randy stated that he would want the owners to have the ability to do something with the buildings to avoid them falling into disrepair, and will need some land to do so.

Constance Olson was in attendance, is a property owner within 1000 feet of Garvoille. Speaking for herself and other neighbors, she stated she is very supportive of the split. The land is unusable, too rocky to farm.

Public hearing closed at 9:13 pm.

Motion to approve conditional use permit to separate off a 5 acre parcel including existing farm buildings and home from its existing A1, 53.7 acre parcel (#6-20-20) located in the SW ¼, NE ¼ of Section 4 for the purpose of selling the farmette made by Eric Larsen. Second by Marty Johnson.

Roll call vote:

Alvin Francis – Y; Doug Zweizig – Y; Eric Larsen – Y; Marty Johnson – Y; Rich Templeton – Y; Kim Gruebling – Y. Motion passed unanimously, 6-0.

Eric Larsen moves to approve land division to separate off a 7.48 acre parcel from its existing A1, 53.7 acre parcel (#6-20-20) and rezoning of the proposed lot from A-1 to A-3. Second by Marty Johnson.

Rich Templeton asked for clarification: is it the intention of the owner to leave the remaining 41 acres in agricultural use? Donna Garvoille stated yes, that is her intention.

Public hearing opened at 9:16 p.m.

Public hearing closed at 9:17 p.m.

Roll call vote:

Alvin Francis – Y; Doug Zweizig – Y; Eric Larsen – Y; Marty Johnson – Y; Rich Templeton – Y; Kim Gruebling – Y. Motion passed unanimously, 6-0.

Discuss Growth Management Allocation Plans with Town Attorney.

Alvin Francis described the option of a lot cap on a first come first served basis. Doug Zweizig asked if the cap could be changed later, if desired? Eric Larsen asked counsel for clarification that the first come first served concept does not mean that the Plan Commission can't not approve based on scoring criteria, etc. Attorney Dregne stated he was correct.

Rich Templeton asked the group why the limit should be 2 years at a time, instead of 1 year at a time? He suggests doing 25 per year, and finding out if the lots make the Town money, or cause the Town to lose money. Until then he feels the Plan Commission should be very skeptical of the number of lots approved. At this time, he feels every lot is costing the Town money. Mike Exum was trying to find college students to assist in performing a cost of services study.

Doug Zweizig stated that there was a reason for 2 years; Kim Gruebling explained that the Smart Growth Committee developed the lot limits, and the Plan Commission adopted the Smart Growth Plan and therefore adopted the lot limits as well. Alvin Francis clarified that the 50 lots per 2 years is a limit, and not a goal.

Attorney Dregne questioned whether all lots created fall under this limit? This is something for the Plan Commission to consider.

Additionally, he stated that if the Plan Commission wants to add conditions to land divisions that require deed changes keeping land in ag use, they can. At this point, the Town Board can still attach conditions to the Garvoille land division.

Attorney Dregne stressed the importance of the Plan Commission determining what “counts” and what doesn’t in the annual/biannual lot count. A formal policy, or other mechanism is needed to make this determination. Marty Johnson stated that one question related to this issue is whether land divisions include A2 & A3 parcels or just rural residential?

There should be a system in place to track the parcels approved; Eric Larsen has developed a spreadsheet for tracking and will send out to everyone.

Doug Zweizig requested that Attorney Dregne draft language regarding “what counts” for review at the next meeting. Marty Johnson expressed concern that people could build on existing A1 lots over acreage limits and the houses wouldn’t “count” against the 2 year limit. Attorney Dregne stated that these instances can’t legally be counted against the 2 year limit, only newly created land divisions can be counted.

Attorney Dregne will draft language, as clarification to existing ordinance, for presentation at next month’s meeting.

Alvin Francis felt DATCP large animal facility siting presentation might play a part in this issue. Hopes DATCP presentation will be made at next month’s meeting.

Move to adjourn by Eric Larsen, second by Kim Gruebling. Meeting adjourned at 9:41 p.m.

Respectfully submitted by Regina Ylvisaker, Clerk.

Minutes not official until approved by the Plan Commission at the following properly noticed meeting.