

Town of Union PLAN COMMISSION MEETING Minutes for September 27, 2007

The Town of Union Plan Commission was called to order on Thursday, September 27, 2007 at the Eager Free Public Library, 39 W. Main Street, Evansville at 7:04 p.m. by Alvin Francis, Chairman. Members present included Doug Zweizig, Kim Gruebling, Marty Johnson, Eric Larsen, and Rich Templeton. Members absent: Mike Exum. Also in attendance: Town Engineer Greg Hofmeister, Town Attorney Matt Dregne, Building Inspector Bob Fahey.

Review and Approval of August 30, 2007 Plan Commission Minutes

Motion to approve minutes as written by Kim Gruebling, second by Eric Larsen. Motion carried.

Eric Larsen asked for clarification as to the need and appropriateness of stating in the minutes when a member recuses himself from a vote when a voice vote is being performed (page 7 of August 30, 2007 minutes). Attorney Dregne stated that it is important for the record to show that someone recused himself from a vote, to avoid questions in the future regarding conflict of interest.

Review and approval of 2008 Plan Commission meeting schedule

The meeting date of November 28, 2008 is a Friday; November 27, 2008 is Thanksgiving; date changed to Tuesday, November 25, 2008 at 7:00 pm. Motion to approve schedule with date change made by Eric Larsen, second by Doug Zweizig. Motion carried.

Clerk Ylvisaker will provide Plan Commission and Town Board with updated list of 2008 meeting dates.

Wind Turbine Study Committee Status Update

Tom Alisankus presented an update of the progress the Committee had made. Draft minutes were distributed to the Commission. Alisankus noted that all the information the Committee is compiling is being given to the Eager Free Public Library so the public has full access to it. When the Committee is ready to receive information from energy companies, it will be soliciting the information in writing from said companies. At this time, the Committee is limiting the information being used to make their final recommendation to scientific facts, statistics, studies, etc. and is not considering personal opinions. Mike Leeder has been assigned the electricity aspect of the issue. The current plan is for the Committee to meet each week on Saturdays until such time as the frequency can be reduced. Meetings are open to everyone, and the committee would welcome the public. Meeting location is Village Square Restaurant, 5 West Main Street, Evansville every Saturday at 7:30 am. Meeting notices are currently being posted at Piggly Wiggly, Landmark Co-op, Worthington Tractor Parts, Eager Free Public Library, and the Evansville Review. Notices are not published in the newspaper.

Alisankus informed the Commission that the Committee is requesting funds to cover costs related to information requests, photocopying costs, and other related expenses. Committee would like to request \$500. The request is on the agenda for the Town Board meeting on October 4, 2007; Plan Commission can make recommendation to the Board and it will be reviewed at the meeting. It was clarified that the Committee is not seeking reimbursement for monies already spent by Committee members prior to formation of Committee, only future expenditures. It was noted that Scott McElroy is waiting for outcome of funding request to proceed with information request from the State.

Motion to recommend to the Town Board the approval of providing the Wind Turbine Study Committee \$200 dollars for costs, with the understanding that they may request additional funds if needed, made by Rich Templeton, second by Doug Zweizig. Motion carried by unanimous voice vote.

Attorney Dregne reminded the Committee that it is good practice to preserve the materials that are being gathered, as they will serve as the background for the ordinance. Materials should be cross referenced in the final report prepared by the Committee. Alisankus stated the Committee is currently doing this and will continue.

Discussion of draft of Small Wind Energy Ordinance with possible recommendation of public hearing in October.

The Plan Commission is currently working with a model ordinance, with initial changes made by Mike Exum.

Town Engineer Greg Hofmeister reviewed the draft ordinance, and presented his recommendations and questions to the Plan Commission:

Page 1, 00.05 Definitions, sub (1): Clarification is needed of the term "administrator"; will this be the building inspector?

Page 1, 00.05 Definitions, sub (3): Clarification is needed of the term "owner"; currently defined as both the person who intends to operate MET tower, and the person who owns the property.

Page 2, 00.06 Standards, sub (4): reference to steps and ladders accessing the towers being 8 feet tall, recommends they should be at least 12 feet in height.

Page 3, 00.08 Permit Requirements, sub (2): "site plan review" should be called "site plan requirements."

Page 3, 00.08 Permit Requirements, sub (2)(d): recommended adding the requirement that design of foundation and tower structure be done by Wisconsin professional engineer; this ensures a soil investigation is done.

Page 3, 00.08 Permit Requirements, sub (4)(b): recommended keeping existing expiration timeframe of 12 months, felt it may be too short of a period of time considering issues that could be related to repairing towers.

Page 4, 00.09 Abandonment, sub (2): reference to removal of system/tower upon abandonment is not specific enough. Should include requirement to remove subsurface, wiring, etc upon abandonment.

Page 4, 00.10 Building Permit Procedure, sub (1): should read "...accompanied by 3 copies of the site plan..."

Page 4, 00.10 Building Permit Procedure, sub (2): Reference to review timeline for permit approval or denial, should be 30 calendar days. Also would add statement that 30 calendar days is from receipt of complete application. Whoever is reviewing the applications should have checklist to ensure completeness.

Attorney Dregne asked if there is a need for an engineering review of any plans, etc? Additionally, will there be any costs involved that the applicant should be providing funds for, i.e. escrow? Consensus was that an additional engineering review shouldn't be needed, if the plans are coming pre-approved by a certified professional engineer. Bob Fahey felt that there should be clause within the ordinance to allow the building inspector to confer with engineer if needed, town attorney as well. Attorney Dregne suggested adding a statement that the applicant will reimburse township if needed for any costs incurred.

Hofmeister noted that the design and engineering of towers is not something that everyone would know about, therefore plans may require additional engineer reviews. He also recommends requiring professional engineer's certification on all towers.

Doug Lee asked for clarification of the difference between large & small wind energy systems? Small wind energy systems have a total height of 170 feet or less; large wind energy systems exceed 170 feet in total height. Attorney Dregne suggested that issues addressed in ordinances for both large & small wind systems be treated similarly.

Zweizig stated that Hofmeister has addressed design issues through his recommendations in the draft ordinance, but execution issues still need to be addressed. Fahey suggested requiring the professional engineer who originally signed off on the design to sign a completion statement. He felt this would protect the township from problems in the future, as he does not have the expertise to perform a final review of the tower. Francis wondered if requiring this type of certification by a professional engineer would be cost prohibitive to people who are spending \$25,000 - \$50,000. Attorney Dregne stated that specific requirements regarding what is to be certified would need to be developed. Marty Johnson felt that having the professional engineer certification requirements would help to eliminate "do it yourselfers" who want to erect a tower themselves in their backyard.

Jim Bembinster asked if the town could go to the state for review of plans, site, etc? Wisconsin building codes are stringent, and he felt this may be a resource. Fahey did not think the Department of Commerce would do this. Additionally, he stated that the town hasn't required a completion certificate on cell phone towers thus far, and several have been erected in the township. Hofmeister estimated the total cost of professional engineer review of design and final review to be \$1,000-\$2,000. Gruebling felt this cost was reasonable to ensure the safety of the systems. Randy Shottliff suggested that the building inspector inspect tower base prior to backfill placed around base and tower being erected. Fahey is comfortable reviewing and certifying the concrete base, not the tower itself. Felt a structural engineer must review final tower construction.

Renee Exum stated that Mike Exum had spoken to Mick Sigrillo about what standards to use; he (Sigrillo) suggested using the tower manufacturer's standards.

Marty Johnson wants to review a final draft of the ordinance, incorporating recommendations, before making any further decisions.

Attorney Dregne believed Mike Exum had the electronic copy of the ordinance; he will obtain a copy, make changes, and send out to the Commission.

Easement issue still needs to be decided, was discussed at last meeting. Overall feeling is that easements are not a good idea. Attorney Dregne will not provide for easements in the ordinance at this time. Will proceed with assumption that small wind energy systems will be allowed in all zoning districts if criteria are met.

The Wind Turbine Study Committee will be included in the distribution of the draft ordinance. Continue discussion at next meeting with revised draft.

Motion to continue discussion of Small Wind Energy System Ordinance at next Plan Commission meeting, with review of revised draft ordinance, made by Eric Larsen. Second by Marty Johnson. Motion carried by unanimous voice vote.

Discussion of Growth Management Policy language as provided by town attorney.

Attorney Dregne reviewed the memo distributed to Commission members. The basic question which needed resolution was “what do we include when counting lots toward the 25/50 lot limit?” Reviewed definition of “lot” (a parcel of land, created by the act of dividing a larger parcel, for the purpose of sale or building development), “residential building lot” (a lot that is zoned in a way that would allow for residential use).

Rich Templeton asked if the Rohloff development (Conifer Hills) was approved by the Plan Commission and Town Board at one time as one whole area, with the stipulation that the area was developed in several phases and the developer was required to come back to the Commission and Board for approval each time a new phase began. Bob Fahey clarified that the entire Conifer Hills area was rezoned rural residential at one time, and the individual lots were approved in small amounts as parts of the phases of development.

Marty Johnson stated that many towns and townships are using the approach of phasing and utilizing a developer’s agreement to ensure development stays within the bounds the township wants to stay within. Greg Hofmeister agreed, stating that this approach allows for more control by the town and better understanding between all parties. Attorney Dregne does a lot of work on developments with towns, and stated that it is common to have development agreements. Many times when dealing with phasing, the developer decides what each phase will look like. In this case, phasing could be used to allow the township control over the pace of development. Doug Zweizig would like clarification that the Plan Commission can legally do this? Attorney Dregne stated that the Comp Plan may need to be adjusted to allow for phasing, as at this time it clearly states that the town will not approve the creation of more than 50 lots. Eric Larsen stated that the Comp Plan was meant to be specific, to allow the town control. Templeton believes the town should have this power; additionally he feels lot approvals should be 25 per year, and if the 25 lots are not used up during the year, they do not carry over into the next year - it’s still just 25 lots for the next year. Attorney Dregne stated that the Comp Plan must be changed if the specific distinction Templeton spoke of is desired.

Zweizig believes using developer's agreements is the way to control growth. Attorney Dregne feels either approach is legally defensible. Zweizig asked for clarification on whether the Comp Plan would need to be changed to allow for developers agreements; Attorney Dregne indicated that it would. Kim Gruebling stated that in the past, utilizing phased development, the Town Board was able to ensure that all conditions of development are met (i.e. water drainage issues). The Board can require problems to be fixed before more lots are approved.

Alvin Francis asked Gruebling if he agreed with the definition of a lot as put forth by Attorney Dregne; Gruebling stated that he is.

Johnson brought up issue of size of buildable lots (35 acres) and land divisions, wondering how these fall into definition of lot. Attorney Dregne stated that the existing 80 acre lot is one current existing lot; dividing off 35 acres *then* creates a new lot. This action should require a CSM and approval by the Plan Commission and Town Board (this is current practice). Zweizig asked if this then means that ordinance language needs to be changed? Attorney Dregne stated that it did not necessarily have to be changed; but stated that developers may be concerned about not having assurance that additional lot requests will be approved. He suggested that plat, zoning and lots be approved all at once in one phase, leaving all the rest of the land unchanged until the next phase is requested.

Zweizig asked if all 50 lots are available, and a developer wants to develop all 50, can Plan Commission legally approve only 20 lots? Attorney Dregne stated that if zoning requirements, etc. are met then the request can't be denied. Gruebling asked if denying zoning changes could be a way to deny the development in this situation? He feels this is a fairness issue, ensuring that one person does not get all lots and allowing others to have a chance as well. Attorney Dregne clarified that the town can't limit the number of lots allowed to one developer through a developer's agreement if you're working on first come first served basis. One possible scenario is to have window of time each year for developers to request development, allowing a certain number of lots within each subdivision, then single lot requests from individuals can be approved throughout the rest of the year, up to the overall 25 or 50 lot limits.

Randy Shotliff stated his opinion that most developers are going to want to work *with* the town, he suggested not having initial meetings between the town and developer in a public forum; instead privately. Zweizig felt that this type of meeting would need to be a public hearing; Shotliff believes a developer's agreement can be drafted between the two parties, not signed, and then brought to a public hearing. Attorney Dregne stated that the Plan Commission could meet privately with legal counsel, without the developer, to discuss negotiations; then send the attorney to meet with the developer. Any Plan Commission meetings with a developer must be public meetings.

Attorney Dregne suggested another scenario: Plan Commission can review all developer applications, determine how many lots will be allocated to each developer, and then send the attorney to meet with the developers to negotiate terms. However, the Comp Plan must be changed to take this approach.

Zweizig requested a memo from Attorney Dregne outlining possible scenarios.

Motion to adjourn discussion and continue at next meeting, at which time counsel will provide an outline of possible scenarios regarding lot allocations made by Doug Zweizig. 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.

Presentation by Wisconsin Department of Ag and Consumer Protection regarding the Large Animal Facility Siting Ordinance, DATCP-51, and how it affects Union Township.

Mike Murray, from the Wisconsin Department of Agriculture, Trade and Consumer Protection was in attendance and distributed materials related to Ordinance ATCP-51 to the Commission.

Murray stated that the town does not have to have control over siting. The town's current ordinance would have to be changed to adopt ATCP-51 law. Currently the town's ordinance has no numbers listed for when a conditional use permit is required. ATCP-51 would implement specific numbers. Whether using ATCP-51 or not, sites with 1000+ animal units must get approval from the Department of Natural Resources.

At this time, Murray stated, it is the town's choice to make if it wants to require farmers to come in for conditional use permits. Another issue is does the town want to review drawings for manure storage facilities and similar facilities? Alvin Francis stated Rock County had offered to assist with this in the past.

Rich Templeton felt that current conditional use permits are not being monitored effectively and enforced, is therefore unsure if issuing more is appropriate. Murray noted that some towns require farmers to come to the Plan Commission/Town Board every year with a new nutrient management plan, and update the township. He noted that this process could include a site visit as well. Fines, violation language is included in the sample ordinance provided to the Commission.

Jim Bembinster asked if someone applied for a 2,500 unit feed lot and it meets all the qualifications, can the town still deny the application? Murray stated that the town could deny the application, if it didn't meet the town's Comp Plan, otherwise it could not be denied. Kendall Schneider felt that a site of that size probably wouldn't get manure management approval; it would be a multi-jurisdictional issue on an operation that large.

The packet of information provided by Mike Murray was reviewed with his recommendations specific to the Town of Union.

Kim Gruebling stated he would not be in attendance at the next meeting, and submitted his completed scoring sheet for the Affholder subdivision request to Chairman Francis for consideration and review at next month's meeting. Gruebling strongly recommended to the Commission going over their scoring sheets carefully, and that they should be noting reasons for any changes in order to assure good record keeping.

Move to adjourn by Eric Larsen, second by Marty Johnson. Meeting adjourned at 9:40 p.m.

Respectfully submitted by Regina Ylvisaker, Clerk.

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