

# **Town of Union PLAN COMMISSION MEETING Minutes for October 25, 2007**

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The Town of Union Plan Commission was called to order on Thursday, October 25, 2007 at the Eager Free Public Library, 39 W. Main Street, Evansville at 7:01 p.m. by Alvin Francis, Chairman. Members present included Alvin Francis, Doug Zweizig, Marty Johnson, Eric Larsen, and Mike Exum. Members absent: Kim Gruebling and Rich Templeton. Also in attendance: Town Engineer Greg Hofmeister, Town Attorney Matt Dregne, Building Inspector Bob Fahey, and Clerk Regina Ylvisaker.

## **Approve September 27, 2007 Plan Commission Minutes**

Randy Shottliff asked that clarification be made regarding his statement in the minutes regarding meeting with the Town for developer's agreement; he was not referring to having a private meeting with the Plan Commission, as this would be an illegal meeting. This was not his intention. Specifically, he would be asking to meet with the Town's attorney and some Plan Commission members prior to bringing a request to the Plan Commission.

Motion to approve minutes as written Eric Larsen, second by Doug Zweizig. Motion carried by unanimous voice vote.

Attorney Dregne referenced his email dated September 30, 2007 in which he requested clarification be made of the minutes of the August 30, 2007 Plan Commission meeting minutes. Specifically, "On page 3, the minutes say that I said that someone who lives adjacent to a property potentially sited for wind energy has a conflict of interest. I don't think I was that definite in my statement - I think I said that an adjacent property owner might have a conflict of interest." Attorney Dregne requests that said email be attached to the August 30, 2007 minutes.

Motion to attach email from Attorney Dregne dated September 30, 2007 to August 30, 2007 Plan Commission meeting minutes made by Marty Johnson. Second by Eric Larsen. Motion carried by unanimous voice vote.

## **Wind Turbine Study Committee Status Update**

Jim Bembinster reported that the committee is still meeting every Saturday morning from approximately 7:30-9:00 a.m. They have decided to use the State model ordinance as a template, and insert information from other community ordinances as appropriate. The committee is still gathering information, and will be sending an information request to stakeholders in the near future. The ordinance will cover the large wind energy development process from beginning to end, permitting to decommissioning 30+ years later.

At this point, Bembinster stated that the ordinance development process is on schedule, and the committee has every intention of delivering the ordinance to the Plan Commission within the timeframe allotted. Marion Tong resigned as committee alternate; she was unable to make the time commitment required. Mike Exum also

resigned from the committee. Most of the research collected by the committee thus far is available for public review and use at the library.

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

Matt Dregne summarized the reviews of the ordinance draft which had occurred to date: legal counsel had reviewed the ordinance and made initial changes specific to the Town; Town Engineer Greg Hofmeister reviewed draft and added comments and recommended changes; legal counsel reviewed again and incorporated Hofmeister's comments/changes. At this point all issues brought up by the Plan Commission should have been addressed in the draft document.

Mike Exum noted that the original ordinance template used the terms "building inspector" and "administrator" interchangeably, asked if this should be the same individual and therefore the same term used? Attorney Dregne stated that all references to "administrator" should have been removed in the most current draft of the ordinance, with the term "building inspector" to be used exclusively.

Doug Zweizig would like to see revision dates included on each version of the ordinance; Attorney Dregne will ensure dates are included on each copy, and also show all changes and revisions using red type and strikeout.

Alvin Francis questioned the reference to guy wires on page 1, Section 00.05-Definitions, sub (6), wondering if they are used for these types of wind energy systems? Exum confirmed that some types of wind turbines use guy wires. Francis asked if the guy wires would be subject to setbacks? Attorney Dregne stated that his assumption was that setbacks would be measured from the base of the tower. Marty Johnson asked Engineer Greg Hofmeister if it was common to have setbacks for guy wires? Hofmeister stated that there typically are not setback requirements, the guy wires are allowed to run to the edge of the property. He further stated that guy wires are usually the same height as the tower they are stabilizing, but could be longer or shorter. Francis felt clarification was needed on the location of the stake anchoring the guy wire: is it allowed to be right on the property line or does it need to be within the property a few feet? There are different types of anchors that can be used, according to Hofmeister, but in any case the stakes should be on the property. Building Inspector Bob Fahey stated that it was his opinion that a five foot setback would be appropriate for any anchors used. Francis felt it was important that a setback and location of anchors should be specified. The Commission members agreed that clarification should be made; Attorney Dregne will include a statement in his final draft indicating a five-foot accessory setback will be required in all zoning districts.

Exum questioned whether the term "professional engineer" should be more specific? Hofmeister felt that professional engineers are self-regulating and will not sign off on something inappropriate (i.e. electrical engineer would not sign off on structural issue), therefore further clarifications of the statement are unnecessary. Attorney Dregne agrees with this as well. Exum asked if the professional engineer providing the approval must be certified by the State of Wisconsin? Consensus was yes. It was further clarified that the professional engineer's duties are to inspect the site to assure it is appropriate for locating a tower, the building inspector is responsible for inspecting the construction of the tower and its conformance to manufacturer's specifications.

Attorney Dregne detailed for the Commission that in reference to the paragraph on page two of the ordinance which discusses sound limits, he reviewed other ordinances for language related to sound and incorporated the most common language. Jim Bembinster will review the language incorporated and provide comments. Bembinster stated that as a rule, 5db over ambient sound is considered acceptable. Normal conversation is 50db. Depending upon what frequency the new sound is, it can sound much louder at 5db than other sounds at different frequencies would sound at 5db. If the new sound is a matching frequency to the existing sound around it, the new sound most likely will not be heard. Rural ambient sound has been measured, so there is an existing baseline to work off of. Pressure level, i.e. how far the sound will travel, is also another consideration. Renee Exum will forward email of draft ordinance to Bembinster for review and input. Attorney Dregne stated that changes to the ordinance can be made following the public hearing, if needed, after Bembinster's review of the language. Zweizig questioned the history of enforcement of ordinance language related to sound? Attorney Dregne has worked on this issue recently, specifically the question was how to ensure that the sound level was within range once installed? Answer was simply that the sound level would be measured once equipment installed. The problem lies in what to do if the sound levels are not in compliance. Dregne has no experience in language enforcement regarding 5db over ambient.

Johnson felt that if changes can be made to the ordinance following the public hearing, then the Plan Commission should move forward with scheduling a public hearing. The public hearing could be held at the November 15 Town Board meeting if noticed properly (class 2 notice). Attorney Dregne clarified that there is nothing that requires the Plan Commission to hold a public hearing versus the Town Board holding the public hearing; State statute allows it. The Plan Commission's recommendation tonight could be considered at the November 15 meeting, with a public hearing held at that time.

Francis asked for clarification of the intent of the ordinance, is it to be a permitting ordinance for all zoning districts? Exum felt it might be an issue in rural residential districts, wondered if leasing ag land next to rural residential land to meet setback requirements would be allowed? According to Attorney Dregne, generally if you can't meet the setback requirement with the property you own you can't site the turbine. Setback requirements cannot be met with an easement, and landowners should not be allowed a variance to create a lot to meet setback requirements.

Zweizig asked if the sign allowance will remain in the ordinance? It was agreed that the Green Bay Packer logo reference will be removed; however the allowance for placement of warning signage would remain.

Fahey asked that the point from which the setback is measured from, specifically the base of the tower, be included in the final ordinance draft.

At this point in time, no language for reimbursement to the Town for any costs incurred in the siting of a tower is included in the ordinance. Attorney Dregne suggests either in this ordinance, or elsewhere in zoning code, language be developed and included which would require an individual to reimburse the Town for those types of costs (engineering, etc). The fees would be set by the Town Board by resolution.

Attorney Dregne provided copy of the State statutes regarding code of ordinances. He explained that the benefit to this method is that everything related to ordinances can be

incorporated and new ordinances can be adopted as additions to the existing zoning code. Fee schedule would be then added to Chapter 17, as well as language outlining requirements for individuals to “reimburse town for professional expenses related to applications”. An example of how this process would work is the current growth management language, which would be adopted as an amendment to the zoning ordinance if the code of ordinances approach was taken. All future ordinances and related materials would be amendments to the code of ordinances. The Town can choose to codify some or all of their ordinances. It was Attorney Dregne’s recommendation that ordinances the Town relies on regularly should be codified. Overall, it is an administrative choice.

Kendall Schneider stated that it is the Town’s intention to work towards establishing a code of ordinances; however the first priority was to get the Town’s ordinances completed following the development of the smart growth plan. Attorney Dregne can begin the process and it could be approved at the November 15 Town Board meeting. Driveway ordinances, other similar ordinances should be included in the code as well. Any changes made later to existing ordinances included in the code could be amended into the ordinances at any time. Attorney Dregne will work with Clerk Ylvisaker to get ordinances prepared to be codified at November 15 Board meeting.

Motion to hold public hearing on revised draft of Small Wind Energy Ordinance at November 29<sup>th</sup> Plan Commission meeting made by Doug Zweizig. Second Eric Larsen.

Motion carried by unanimous voice vote.

**Discussion of Growth Management Policy language as provided by town attorney.** Materials were not ready for review by the Plan Commission at this time. It is possible to have a public hearing on the growth management policy at the November 29 Plan Commission meeting; however it was decided by the Commission that they would prefer to have an opportunity to review and discuss the policy prior to the public hearing.

Attorney Dregne outlined the language he is currently developing for the growth management policy. The basic process will be to establish a one-week window of time per year during which individuals can apply for land division requests which will result in the creation of more than one lot. At this time the question is what time of the year would be best to establish the window? Keep in mind that there would be a timeline of 90 days from the date of submission of a complete application to the date of the Town Board meeting approving the preliminary plat. It was Attorney Dregne’s opinion that August may be an appropriate time, as this would allow approvals to be completed by late fall and ready for building season the following spring. It would be possible to have additional windows of time for applications, but it would make the process more difficult. To clarify, the one-week window for applications process would not apply to those seeking to create one lot, only to those seeking to create more than one additional lot. Randy Shottliff questioned if there is enough development pressure in the Town to warrant the process outlined. Attorney Dregne developed this process as one way to deal with the 50 lots every two years requirement laid out in the comprehensive plan. At this point he needs direction from the Plan Commission on how to proceed with developing further language; at least one public hearing will be needed prior to adoption of the language. Previous discussion was to utilize the “first come first served” approach for lot allocation OR develop a process which allows the Town to review multiple development applications and approve them en masse using the scoring sheet review

process. Marty Johnson asked if the window of time for applications be expanded? Attorney Dregne stated that anything can be done; the application windows could be several weeks throughout the year, a longer period of time once a year, etc. Larsen stated it was his understanding that the Commission was exploring different options; he would like to see this process outlined in writing for further consideration. Zweizig felt one appropriate question to ask is how many times per year does the Town want to go through the 90 day review and approval process?

A concern voiced by Zweizig was if the Town had any basis for approving (for example) only 10 lots out of 40 lot request? Attorney Dregne stated that the Town must approve anything that meets its established land division/lot creation/zoning standards and comprehensive plan requirements. Under Wisconsin law, if a developer submits a plat that meets the requirements of the Town's Comprehensive Plan, the Town must approve it. Francis stated that the precedent has been to approve no more than 10 lots per year out of larger requests, and that requests for more have been phased in over several years. Johnson suggested that one individual could own three companies, and could then develop a total of 30 lots per year utilizing the three companies, if the Town limited its approvals to 10 lots per individual per year.

Johnson clarified that the intention of the language in question is to have processes in place for the future, following the development of the smart growth plan. Historical development trends play no part in making future decisions at this point.

Exum questioned whether requests for more than 10 lots been approved since the smart growth plan was approved? Francis stated that none have been. Exum pointed out that although the developers who have worked with the Town thus far have been willing to work with the Town, there may not always be developers so willing to work with the Town. Larsen felt that there is a lot of ability within the comprehensive plan to approve or deny lots. Francis stated that he did not like the idea of having only one window of time to get applications approved for the entire year.

Attorney Dregne will draft language for both approaches, including a bullet point outline of each approach, for Plan Commission discussion, instead of drafting full language at this point. Exum requested that he also include legal advantages and disadvantages of each approach, as he wants to be sure the Town is in control of development.

#### **Discussion of draft of Large Animal Facility Siting Ordinance and DATCP-51.**

Francis posed the question of whether or not the Town would ever have the need to utilize such an ordinance, as there is nothing currently in the Town of this size. On the other hand, the representative from DATCP suggested having something in place for the future.

Jim Bembinster asked for clarification regarding the siting ordinance: if someone wanted to site a facility, and they meet the criteria but the Town doesn't want to approve it, the individual can appeal the Town's decision to the siting board? Francis stated that health and safety concerns would need to be proven in such a case. According to legal counsel, state law would preempt town law in the situation of Town decision being appealed. Johnson questioned whether if the Town adopts an ordinance, is it then responsible for costs related to reviewing sites, etc.? Would the Town then *not* be responsible for such costs if they *did not* adopt ordinance?

The proposed ordinance would allow the Town to govern sites within the 500-1000 animal unit size; otherwise sites are governed only once they meet the 1000 animal unit size, and in that case by state law.

Motion to adjourn made by Mike Exum, second by Marty Johnson. Meeting adjourned at 9:01 p.m.

*Respectfully submitted by Regina Ylvisaker, Clerk.*

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