

Town of Union

PLAN COMMISSION MEETING

Minutes of August 19, 2008

The Town of Union Plan Commission special meeting was called to order on Tuesday, August 19, 2008 at the Evansville Fire Station, 10 W. Church St., Evansville, WI at 6:00 p.m. by Doug Zweizig, Co-Chairman. Members present included Doug Zweizig, Kim Gruebling, Eric Larsen, Dave Pestor, Renee Exum, and Doug Lee. Also in attendance: Town Engineer Greg Hofmeister, Building Inspector Bob Fahey, Town Attorney Matt Dregne, and Clerk Regina Ylvisaker.

Approve August 12, 2008 Plan Commission Minutes.

Motion to approve August 12, 2008 minutes made by Kim Gruebling. Second by Doug Lee. Motion carried by unanimous voice vote.

Review, discussion and possible modification of the Draft Large Wind Turbine Siting Ordinance.

Doug Zweizig reviewed his list of "to do" items for the Plan Commission.

Personal experiences of Plan Commission members at turbine sites:

Gruebling has visited sites in Byron, Lincoln Township in Calumet Co, and Montfort some time ago. Found that overall people were happy with the turbines. The issues that were cited were jealousy between those who had turbines on their land and profited and those who did not; and the conditions of the roads following installation of the turbines. One individual he talked to said that the energy company put up a second antenna for their televisions to get reception, as it had been affected by the turbines. Another individual stated they had problems with shadow flicker and the company planted two pine trees to block it. He spoke to a farmer in Montfort, who was happy with the turbines. An individual he spoke to in Byron felt that the wind towers were inefficient and there should be more nuclear power instead. One individual stated they could hear the turbines when they turned toward the wind. Gruebling talked to the Town Chairman in Lincoln Township about a letter that he (Gruebling) had received when the issue of wind turbine siting in Union started; Chairman stated the letter was full of exaggerations and many facts were misrepresented.

Lee visited wind farms out west; he stated that issues and complaints seemed to depend upon the time of day. Overall, there was about a 60/40 split between those who had positive opinions of the turbines and those that did not. It seemed to Lee that those who had them on their land were positive about them, and those who did not stated they were uncomfortable with them- this may be jealousy.

Eric Larsen went to a site south of Rockford; no one was available to talk to so he simply got out of his car and walked around. It was a nice day, windy, and the windows in the homes surrounding the site were all closed and it seemed that no one was outside. The noise was similar to a plane going overhead. He stood under a tower to see if the reports of unease could be felt; it was not, spent 20-30 minutes there.

Doug Zweizig reviewed his discussion with Rick James. Cited some specific issues with sound studies. He suggested not using the word "ambient" and instead using "background noise." Gruebling would like to know if Kemperman and James (K&J) have done any preconstruction studies, and how did they turn out after construction? Did they meet their specs? If off, how far are they off? How many have they done? Zweizig will check on Gruebling's questions and report back to the Commission. Rick James felt that a distance setback would not be needed if they used their sound studies, it would only be needed for safety issues. Dave Pestor proposed a one mile setback that can be increased or decreased by using sound studies through independent agencies, but not decreased to less than ½ mile from a residence. He felt this would put more burden on the energy companies to be sure they have the right sites for the sound studies and have to prove to the Township that the sound studies are accurate using independent agencies. Larsen questioned why require the one mile setback to begin with, if there is a sound study required? Would the sound study be required, or could the company just accept the one mile setback?

Regarding concerns with enforcement, Zweizig reported that Rick James stated one thing that can be required is that the turbine not be allowed to operate during the night; this is not a big burden on the power company as this is not a peak usage time and can reduce problems with noise contributing to sleep issues.

Zweizig then reviewed the questions he asked Rick James related to the commonly found 5dB over background noise level, and the "annoyance" issue with regard to health effects. James had explained that "5dB difference is clearly perceptible and therefore will be annoying at night, especially for children and even if they continue to sleep through it...This had been widely, internationally recognized." Additionally, James stated "annoyance is a common concept in community noise discussions, in the literature and in the courts. In Pedersen and Wayne's 'Wind turbine noise, annoyance and self-reported health and well-being in different living environments,' the percentage of persons "annoyed" by the turbine noise increased directly with the dBA sound pressure levels. Since response to intrusive noise will differ in degree among recipients, some proportion of those "annoyed" will be "highly annoyed," leading to complaints and legal challenges to the noise sources and regulators."

Overall feelings about K&J approach:

Jim Bembinster stressed the importance of including C weighted testing in the sound testing requirements.

Larsen is not comfortable relying solely on a sound level study system for siting; feels there must be a minimum distance established no matter what. Feels there is too much opportunity for bad data coming out of studies. Others agree, seems to be the general sentiment of the Commission.

Regarding enforcement issues, K&J outline enforcement methods in their ordinance. Attorney Dregne clarified that if there is a lawful ordinance in place and the turbines are not in compliance, there should be no problem in getting a court order to make the turbines stop operating. Lee suggested that perhaps older wind farm developments did not have ordinances that they could enforce, leading to some of the problems they are experiencing today.

Zweizig asked which ordinance the Citizens Committee would rather see used, the K&J ordinance or the draft the Committee has put together. Cathy Bembinster believes that the K&J ordinance is a better document. She also believes that a minimum setback should be required, no matter what other studies are required. Jim Bembinster agrees, he feels the K&J ordinance is the best ordinance he has seen on the issue. Jim Bembinster offered to send the K&J ordinance to Gordon Whitehead, acoustical engineer in Canada, for review and input. Lee expressed concern that Whitehead might be biased in his opinions, and would recommend contacting someone locally, perhaps with less bias. Lee also feels that the K&J ordinance is a better document to use, as it has a lot of protections for the Township built into it. Should the theory presented in the K&J document be reviewed by another acoustical engineer? Getting approval for that expenditure, and then getting it done, would be time consuming. Gruebling feels getting answers to his question about how many studies they've done and what their success rate has been would give the Commission a better idea of how much trust to put into their methodology. Jim Bembinster cautioned the Commission that using just sound studies does not take into effect multiple turbines and their possible affect on sound levels.

Attorney Dregne stated that at this point, there is no question that a sound study will be required; now the Commission is wondering how good the methodology is that K&J is using. Therefore, is the Commission considering the sound study as an alternative to a distance setback? Dregne reminded the Commission to keep in mind the severability clause, which means if there is one part of the ordinance that is unenforceable by a court, they can strike that portion without changing the rest of the document. Given that, there would be a back up requirement that could be enforced if both distance and sound setbacks were included. Dregne believes it would be easier to defend an ordinance that requires that the industry operates within the sound pressure levels, as there is a good deal of research to back it up and it presents a solid argument. Lee stated that there is plenty of documentation to support the ½ mile setback as well. However, Dregne stated, he has been unable to determine exactly why the ½ mile setback is needed, as there is supporting documentation for other setback distances as well, i.e. 1 mile.

Motion to incorporate the sound measurement aspects of the Kemperman and James into the Town's proposed ordinance, with changes as required (pages 19-32 of the "How To Guide") made by Eric Larsen. Second by Doug Lee.

Larsen is unsure whether the purpose and intent, and definitions in the K&J ordinance should also be incorporated. Renee Exum feels that definitions should be used, and the draft ordinance should be adjusted to use the same abbreviations and terminology. The K&J document will totally replace the noise section of the current draft ordinance, as well as the enforcement section.

Gruebling cited an issue with 4. Complaint Resolution, (1) on page 26; he is concerned with establishing a paper trail and someone taking ownership of the complaint. He suggested including someone from the Town Board, Building Inspector, etc in the complaint process, as well as requiring that the complaints be made in writing. Gruebling also wondered how multiple complaints from one individual would be handled, and how many times the same complaint would be investigated. Dregne believes that the enforcement section could use some work; usually, the Town is placed in the position of deciding how to address complaints. The Commission should try to clarify the complaint procedure, to ensure that the operator has the responsibility to work with the Town on complaint investigation and resolution. Dregne also suggested including a statement clarifying that once the complaint is resolved, it is resolved finally. Gruebling suggested that the Building Inspector contact the company with the complaints, instead of the complainant.

Motion carried by unanimous voice vote.

Physical setback issue:

Lee stated his support for the ½ mile setback minimum proposed. Larsen agreed.

Motion to adopt ½ mile setback made by Doug Lee. Second by Eric Larsen.

Pestor cited numerous studies and new information suggesting larger setbacks. Believes that based upon what he has read and seen, the setback should be greater than ½ mile to ensure public health and safety.

Motion to amend the original motion to a 1 mile setback made by Dave Pestor. No second, motion failed.

Exum suggested using a required ½ mile setback and recommended setback of 1 mile, leaving the decision up to the power company to determine where they wanted to site turbines within those parameters. This would include adopting more stringent sound mitigation requirements if the turbines were sited closer than 1 mile. Larsen would like to see the sound mitigation requirements remain the same for residents no matter how close they are to the turbines.

Zweizig brought up the issue of how to deal with new technologies? Larsen's opinion is that the ½ mile setback should be the minimum, with the sound studies results available to push the setback distance out farther if required. This approach would allow for changes in technology.

Dregne reviewed the draft findings, and brought up the fact that the ½ mile setback seems to be on the low end of the recommendations. He will adjust the findings to support the decision of the Commission.

Original motion carried by unanimous voice vote.

Motion to delete section VI (D) (12) a & b as unnecessary made by Kim Gruebling. Second by Renee Exum.

Motion carried by unanimous voice vote.

Regarding section VI (D) (12) c, shadow flicker: What will be done with the map requested in this section? Dregne believes that the intent is to locate the potential problems and mitigate them. There are larger concerns about shadow flicker, including its effects on yards, buildings and intersections. Jim Bembinster stated it is his understanding is that the mapping that they do is based on one 3'x3' window

on a house only. Dregne stated that a more clearly defined standard needs to be laid out than “identify problem zones within a one-mile radius where shadow flicker will interfere with existing or future residences and roadways...” There should be better technical language to use in this section. If available, a specific standard should be cited. Gruebling felt that the “future residences” statement would be difficult to address.

Zweizig agreed that better language is needed; Cathy Bembinster volunteered to draft new language for this section.

Building Inspector Bob Fahey addressed the issue of stray voltage related to wind turbines. He believes that this issue will not be a problem with turbines. Generally, stray voltage found on farms and affects animals. Many farms have not been wired well over the years, and are not kept up as they should be with grounding, bonding, etc. Stray voltage results from poor grounding, bonding, etc. Although the Public Service Commission rules deal with utilities, some of the high voltage wires coming from turbines could be privately owned, in which case the PSC would not regulate them. The Department of Commerce regulates privately owned utilities. Overall, Fahey recommended having something in the ordinance to cover both utility and privately owned wires. It is his opinion that it is a good idea to have pre- and post-construction stray voltage studies done to protect everyone involved. Fahey estimated that studies would cost \$2,000 to \$3,000 per farm. He also suggested that whatever language they use, the term “certified stray voltage investigator” should be included.

Regarding the term “good utility practice” in section VIII (L), Fahey stated that no official definition for this exists. It is similar to the term “workmanlike manner”, very subjective and hard to enforce. However, “good utility practices” would be things that utilities do on an everyday basis. Zweizig asked if Fahey knew of any alternative phrasing that could be used. “Good utility practice” is a term that is used frequently in the industry, and Fahey felt it could be left in. Additionally, the requirement that the “good utility practices” be “approved by the Town of Union Board” should be removed; language stating that the licensee will conform to “all applicable rules and regulations, in the installation and maintenance of all electrical facilities within the WESF, as approved by a commercially certified electrical inspector” should be added. Dregne noted that there is nothing in the Large Wind Energy ordinance regarding construction specifics, but the Small Wind Energy ordinance has very detailed requirements related to construction. It was explained that this is because there is a larger concern with construction of small turbines, as individuals can put them up themselves. Large turbines are put up by companies with much invested, it is understood that they don’t want to risk their investments and therefore have high construction standards.

Regarding stray voltage, Fahey is unsure why two pre- and post- construction stray voltage tests are needed; one each should be sufficient. Change statement to only one pre- and one post-construction stray voltage test. The twice in spring, twice in fall requirement should also be removed.

The issue of defining “nonparticipating parcel” was brought up; this would be a parcel not entered into an agreement with wind energy developer. The definition for “participating landowner” should include the statement “allowing for a shorter setback than would otherwise be allowed under this ordinance.”

Motion to adjourn made by Eric Larsen. Second by Doug Lee. Meeting adjourned at 8:56 pm.

Respectfully submitted by:
Regina Ylvisaker, Clerk

Note: Minutes are considered draft until reviewed and approved by the Plan Commission at a properly noticed meeting