

# Town of Union

## PLAN COMMISSION MEETING

### Minutes of August 27, 2009

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The Town of Union Plan Commission meeting was called to order at the Eager Free Public Library, 39 W. Main St. Evansville, WI at 7:00 pm on August 27, 2009 by Chairman Alvin Francis. In attendance were Vice-Chairman Doug Zweizig, Kim Gruebling, Eric Larsen, Doug Lee, Dave Pestor and Renee Exum. Town Chairman Kendall Schneider, Supervisors George Franklin and Don Krajeck, Treasurer Sharon Franklin, Building Inspector Bob Fahey, and Clerk Regina Ylvisaker were also in attendance.

#### **Approve July 30, 2009 Plan Commission Minutes**

Motion to approve the minutes of the July 30, 2009 Plan commission meeting as written made by Kim Gruebling. Second by Eric Larsen. Minutes of the July 30, 2009 Plan commission meeting approved by unanimous voice vote.

#### **Review and possible action related to legal counsel review of Conditional Use Permitting process**

Town Attorney Matt Dregne presented a memo addressing the Conditional Use Permitting process and specific issues related to the Town's current practices. Dregne noted that State statutes and courts provide little guidance for many of the questions that were brought up, and he has provided his best judgment in his memo.

Kim Gruebling asked about the ramifications of the Town simply ending the process of issuing CUPs; Dregne stated that in order to do so, the Town would need to adjust its zoning ordinance and remove the CUP section.

Dregne discussed permitted uses vs. conditional uses. CUP applicants need to demonstrate that they will meet the standards laid out in the zoning ordinance. Once the Plan Commission determines that the planned use is consistent with the standards outlined in the zoning ordinance and grants a CUP, special zoning permission is granted to the owner. Conditions to the CUP may be attached by the Plan Commission. Public notices and a public hearing are required to allow for input by neighbors and other members of the public who may be affected by the issuance of the permit. Dregne's experience has been that upon the initial application for a CUP and initial public hearing, not many neighbors or others show up; they show up later once the use of the property has been changed and they have a problem with the change in use. This could be caused by a lack of information at the outset of the application process; Dregne is unsure how to address the issue of best informing the public.

Gruebling explained that the problems the Town has had have centered on the one or three year reviews of the CUPs, at which time the applicants may not be meeting the conditions set forth in the initial CUP. What action does the Town take at that time? Bob Fahey noted that there is a per-day penalty in place for violating the zoning ordinance, but no options for issuing citations. Gruebling believes that a citation system should be put in place. Dregne explained that most zoning codes take the approach that failure to comply with the conditions set forth in a CUP is a violation of the zoning

code, and can be cited and have a penalty/forfeiture. This process is used to discourage people from violating the code in the first place, and bringing them back into compliance in a timely manner if they do violate. Another option is to seek a court order to make them comply or face contempt of court sanctions. Dregne questions if the Town can have a third option of revoking or not renewing a CUP if it is in violation. There is no case law history on this issue, and he feels that courts may make a decision based upon the facts, type of violation, investment of property owner, etc. The Town needs to decide if they want to have revocation/nonrenewal as an option. If so, Dregne feels there needs to be a way to put property owners "on notice" that they are violating the terms of the CUP and give them an opportunity to come into compliance. The citation process is the most commonly used enforcement tool used as it is easier to administer than going through the courts. Doug Lee questioned what route the Town would take if the permit holder continued to pay the citations because it would be more profitable for them to do so than to come into compliance? How would the Town identify a "habitual offender" and at what point would they get shut down? Dregne feels the Town will need to make policy decisions related to these questions. Additionally, an individual or position needs to be put in a position of power to issue such citations or similar action.

Doug Zweizig stated that he has always felt that CUPs were issued to individuals and not transferrable to new property owners, and Dregne's memo contradicts that view.

Lee asked why, if the Town has no authority to review or revoke a CUP, they would even issue a CUP in the first place? Dregne explained that all the property in the Town is zoned in a way that allows CUPs now, and the only reason the Town could not grant one is if the Plan Commission could show that the applicants do not meet the standards set forth in the zoning code. Gruebling feels strongly that the citation method is the way to go. Revocation could occur after a certain number of offenses, and/or after a certain amount of time.

Motion to recommend to the Town Board that an ordinance be enacted allowing for violations of conditional use permits to be cited by the Building Inspector made by Kim Gruebling. Second by Doug Zweizig.

Discussion: Lee questioned if there would be ways that the permit holder can correct the violation to avoid a citation. Gruebling felt that the Building Inspector must have the right to make those decisions. Zweizig feels it will depend upon what the Board decides. Dregne clarified that the ordinance would need to make it clear that a CUP violation is a violation of the zoning code and outline the range of forfeitures. To issue a citation, the Board needs to authorize someone to issue citations and have the municipal judge determine a deposit schedule, which will give the Building Inspector the info he would need to issue citations. Or, the Town Board could direct the town attorney to file a complaint in municipal court. It is a Board decision; the Plan Commission can only make recommendations. Renee Exum feels that the Town owes it to the Town residents to have an enforcement procedure in place. Lee clarified that if the permit holder pays the citation there is no attorney involved, and if they don't pay it and it goes to court there could be more fees involved for them.

Roll call vote: Alvin Francis– Yes; Doug Zweizig – Yes; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 7-0.

Currently there is no cost to the permit holders for CUP reviews, although the Town may incur costs if attorney or engineer reviews are requested or required. Alvin Francis noted that for situations where animals are involved, nutrient management and manure management requirements change over time, possibly warranting a review. Exum questioned how such situations would be handled, when laws change after a CUP has been issued? Dregne stated that Laws would apply whether there is a CUP in place or not, and they are required to comply with the laws independent of the CUP. Dregne feels the Town is setting themselves up for a difficult problem if they require such reviews. He believes that at a CUP review, the Town is only able to determine if they are still in compliance with the original terms set forth. Lee asked about enforcement of health and safety issues? Dregne stated that the Town is able to enforce health and safety issues separate from zoning and CUP issues.

Zweizig noted that with regard to CUPs issued which allow increased numbers of animals on a small piece of land, there are concerns that a new owner may not operate the facility in the same manner as the previous owner. Is it possible to put in the CUP conditions that they remain in compliance with state and local regulations? Dregne believes such conditions could be included, as long as the Town can demonstrate that such a condition is appropriate under the zoning code. The Town's existing standards seem to be more criteria than standards, and as such Dregne finds them unusual. Zweizig feels page 50 of the zoning ordinance needs to be reviewed with this discussion in mind. There are questions about transferability, and the current standards may not be appropriate if transferability is not an issue.

Don Krajeck questioned what the difference is between issuing a CUP and granting a Special District license. Dregne explained that a Special District license would remove the parcel from the zoning framework, and would give the Town a lot of flexibility regarding questions of revocation and non-renewal. The Town could consider the licensing approach for operations they feel may be more appropriately regulated in such a way.

**Public Hearing: Renewal of conditional use permit currently held by Ralph Knasinski, 16409 W. Holt Rd., Brooklyn, WI to conduct a gunsmithing business and home design and stained glass business at his residence.**

Public hearing opened at 7:56 pm.

The first CUP for this operation was issued in 2004, with a review and second permit issued in 2006. Francis stated he has received no complaints regarding the business.

Motion to renew the permit issued to Ralph Knasinski, 16409 W. Holt Rd., Brooklyn, WI to conduct a gunsmithing business and home design and stained glass business at his residence for another three years (2012) made by Kim Gruebling. Second by Doug Lee.

Discussion: Francis thinks that permit holders should be given notice that their CUP is up for review; doesn't like last two lines of CUP. Gruebling sees no problem with it, feels it should be the responsibility of the permit holder to request renewal.

Roll call vote: Alvin Francis– Yes; Doug Zweizig – No; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 6-1.

**Review and action: Complaints regarding operations at APPI/Phelps pit as related to conditions of CUP**

Francis reviewed the letter submitted by the Davis' outlining complaints they have regarding the operation of the gravel pit.

Exum stated that she spoke with a neighbor of who stated that there has been excessive noise and operation on Sundays.

Attorney Mitch Olson, representing the Davis', stated that the two main complaints are berms not being large enough, which is contributing to dust and sand blowing onto the Davis' property; and the hours of operation. Trucks are entering the pit after the hours listed on the permit. Both are violations of the permit, and the Davis' are asking the Town to take action to bring them into compliance. There are other issues with permit compliance as well, according to the Davis', including no reclamation being performed, vehicles parked in areas not visually appealing to neighbors, trucks fueling on the road.

Emily Winburn, neighbor: stated that the noise level is intolerable at their home. It lasts from 6 am to 6 pm, and as a result they cannot be in their yards. They can hear the trucks' backup alarms while in their home, as well as grinding.

Jason, works for Davis': stated that on many days there is sand blowing off the pit and onto the Davis' property, which gets into your eyes and at times it can be hard to breathe.

Nate, works for Davis': keeps up the property, stated that sand coming across road is thick at times.

Francis requested that pit operator Brett Frank address the complaints.

Frank stated that it was his understanding that "hours of operation" means the times at which he can start crushing, washing and shipping materials. Believes he should be able enter the pit when he wants to, if it is not being operated. Regarding complaints of jake braking, a contractor this spring hired a lot of trucks and was under pressure to get his job done; Frank told all the trucks coming in the pit from that job at least three times not to jake brake on the pit driveway. He only had one complaint during that time, and they came down to the pit to talk to him about it. A sign is up next to the scale stating no braking until highway. Admittedly, there may be an occasional driver who jake brakes if they are not usual drivers in the pit. Regarding brushing the road and driveway, both Frank and his wife, as well as his crushing operator, have done the brushing. It is usually done first thing in the morning around 6 am. The driveway is self washing now that it is blacktopped; one of the neighbors near the pit has a gravel driveway and has more material from their driveway in the road than the pit does. Regarding blowing sand: his trucks all have tarps and the drivers should be using them at all times when sand is in the truck.

Tom Davis stated that not all the blowing sand is due to the trucks, comes from the pit as well. His immediate concern is the berm, which is only about 5 feet high now. Zweizig noted that the report submitted by the Building Inspector which investigated the complaints states the berm is 10 feet high. Fahey clarified that the berm is ten feet in most areas; near the scale house it is lower and he has talked to Frank about that.

Exum noted that section 17.25 of the zoning ordinance discusses air pollution, health of people, etc. The blowing sand may be a zoning ordinance violation. Also of note is the noise ordinance section.

Sharon Franklin stated that she came to the Davis' house to respond to a complaint about blowing sand, and did not see any evidence of sand blowing. He called at 10 am, she arrived in the afternoon.

Don Moen, neighbor: stated that sand does blow, but the question is does the State require sand piles to be tarped? Lee believes the State does not have such a requirement, but believes that out of courtesy the pit operators could do what they could to mitigate the problem. Frank stated that air pumps, monitoring units have been put on his workers to monitor air and breathing, with no problems reported. They water down the area, and have blacktopped the driveway. MSHA regulates pits and is out twice a year to monitor compliance.

Franklin stated that dust is generated when farmers work their fields; it is a part of living in the area. Moen noted that crushed sand can contain silica which is an irritant and is different than farm soil. Additionally, dust from farming occurs for short periods of time during the year, not continually as blowing sand does.

The amount of open area is in question; Frank believes the 20 acres open as outlined in the CUP means open, pit area. Francis asked when they anticipate beginning reclamation. Frank stated that there were 14.3 or 14.8 acres open when he took over, is probably around 18 or 19 acres now. Plans to begin reclamation as soon as possible, when he does more stripping.

Town Chairman Kendall Schneider read in a letter from Andrew Baker, Rock County Land Conservation Department, addressing some of the questions regarding the pit:

August 19, 2009

Mr. Alvin Francis  
Town of Union  
Plan Commission, Chair  
17226 W County Rd C  
Evansville, WI 53536

RE: APPI Pit at 10607 NE Union Rd, Rock County Reclamation Permit #8

Dear Mr. Francis,

In response to your question today regarding the size of the APPI gravel pit in Union Township, I have enclosed five copies of an aerial photo from May 2008 with a red outline around the area we consider active for the purposes of the Rock County Reclamation Ordinance. You will notice that the active area is 30.3 acres, including the active mine, the older mine area to the north, the settling ponds and driveway and office locations. These are all areas that will eventually require reclamation, therefore are considered active under the ordinance. Our definition of "mine" includes everything related to the mining and material handling processes. The Town of Union may interpret the active mine area differently under your Conditional Use Permit for the site.

As we discussed this morning, this is the most recent air photo we have in the County. Additionally, the decision has been made at the state or federal level not to do a flight in 2009 due to budgetary constraints. These photos are the same photos used for farm compliance by the Farm Service Agency. The next scheduled flight is summer 2010. This site may have increased in area in the last year, like many other sites in the County. I intend to visit the active sites in the County later this year to determine active acres using GPS for our annual reports. I hope this scaled photo gives you a good starting point for discussion at your upcoming meeting.

In regard to your question regarding blowing sand and dust, the County has no ability to regulate that under the Reclamation Ordinance. If there is a problem, it may be addressed through your local zoning control.

Please let me know if there is any other information I may provide to assist you in this matter. The best way to reach me is on my cell phone, listed above.

Sincerely,

Andrew Baker, CPESC  
Conservation Specialist

Winburn stated that their biggest complaint is the noise level, which is terrible. Regarding the berm, it is nothing but weeds. Frank agreed that it does look poorly, and stated that he has a contractor coming tomorrow to look at the berms for seeding. He did seed last year, but it was all washed away. He has been told the second week in September is the best time to plant grass. No trees will be planted; it is specifically stated in the CUP not to plant trees as the berms will be used for reclamation.

Davis distributed pictures of his home and pit, and stated that he does not feel that the amount of acreage opened up is really as little as Frank describes. Frank invited anyone, public, Town Board, or Plan Commission, to come out to the pit and he can show pictures of the before and after of the additional acreage opened up. He is confident it is less than 20 acres. Frank suggested that he could move the crusher further down into the pit to help reduce the noise issue.

Eric Larsen stated that, with regard to the hours of operation, in his opinion "hours of operation" means any of the vehicles making noise, not just rock crushing. He doesn't feel it should be done outside of the stated hours of operation. It was agreed that there is a need to better clarify "hours of operation" to be sure what activities can go on. Lee stated that in Madison, nothing happens out of hours of operation - no equipment or trucks run period. Gruebling noted that the pit is not a farming operation which does operate on Sundays, but farming operations don't operate under a CUP.

Dregne doesn't want people to think that the Town has no enforcement options now, they do, but the Plan Commission is not the body that can direct such actions. Direction must come from the Board. To bring someone into compliance, many towns start by discussing the issues with the applicant and proceeding from there. Zweizig noted that there has been no independent third party review of the complaints, other than the

Building Inspector. He believes this is a step that is put in between the Town receiving a complaint and taking action.

Olson stated that it is their belief that there are clear violations as admitted by the pit operator, such as operating after hours, and there are other violations which may need review by a third party. Olson and his clients offered to meet with the Building Inspector, town counsel, Board and Plan Commission members, etc to work out the issues. May need to consider legal actions against the Town and pit operator if the complaints are not resolved. Zweizig did not feel that it was appropriate for the complainant to be involved in enforcement decisions.

Fahey noted that he has no way to measure sound levels. George Franklin stated that back up alarms are required, dump trucks and end loaders both have them and they must be used.

Davis doesn't understand why the trucks need to be parked directly across from his house, vibrate their boxes at 6 am, and have work performed on them on Saturday mornings. Francis stated that these actions are not restricted in CUP. Lee asked Davis if the trucks were placed at a different location within the pit would it resolve that complaint? Davis stated that it would, and noted that he also doesn't know why all the other equipment, fuel tanks, etc need to be placed right next to the road.

Motion to recommend to the Town Board that they involve the Town's legal counsel in coming to a resolution with the Phelps pit, to ensure they are in compliance with their CUP, made by Kim Gruebling. Second by Eric Larsen.

Gruebling recommended that the complainants, owners, neighbors, etc address their issues through a letter(s) so a record is established, and that everyone work together to resolve the issues and be better neighbors.

Roll call vote: Alvin Francis– Yes; Doug Zweizig – Yes; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 7-1.

### **Discussion of recent wind energy related legislation**

Dregne reviewed the details of the recent decision issued by the Court of Appeals regarding the wind energy case in Calumet County. As of last week Calumet County petitioned the State Supreme Court to review the case; he is unsure how long it would take them to reach a decision, should know within a few months. Based on the Court of Appeals decision, the Town has reason to be concerned that the Large Wind Energy Ordinance the Town adopted is now not in compliance with the law. The Town may wish to reinstate a moratorium to give the Town time to see what happens with the Calumet County case. Another issue to consider is to possibly change the ordinance. Basically, the Calumet County decision stated that the ordinance cannot make broad restrictions, i.e. setbacks, and that any such restrictions would have to be project specific.

Krajeck asked if a moratorium would be defensible in court, as we would be waiting for case decision. Dregne is unsure, feels it would be based on general police authority to be in the best interest of the residents. Feels it is a reasonably defensible approach. Krajeck asked if the Town hired experts for opinions related to large wind energy

projects, would that then require the Town to do the same for all other CUPs? It would depend upon how the ordinance was structured, so that the Town could exercise judgment in each case, and require the applicant to pay for it. Dregne thinks the simplest, least expensive way to buy time until the Calumet County case is finalized is to adopt a moratorium. Public hearings on moratoriums are not necessarily required, but Dregne would recommend one.

Motion to recommend that the Town Board adopt a one year moratorium on the construction of any large wind energy facility by ordinance to be drafted by the town attorney made by Doug Zweizig. Second by Eric Larsen.

This motion assumes that the Board will act on this at its next meeting, and hold a public hearing afterward.

Motion amended to state a “two month moratorium, and to schedule a public hearing at the September Plan Commission meeting” made by Doug Zweizig. Second by Eric Larsen.

Roll call vote: Alvin Francis– abstain; Doug Zweizig – No; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 6-0, 1 abstaining.

**Discussion of the August 12, 2009 joint program with the Evansville Plan Commission, and planning for future separate or joint training programs**

Zweizig stated that some topics lend themselves to joint meetings, some don't. Transportation is an issue of mutual interest to the Town and City, as a future planning issue.

**Evansville-Union Implementation Committee Report on progress reconciling differences in future development maps**

Maps are not ready for approval yet.

**Review and discussion of possible amendments and updates to the Town of Union Comprehensive Plan, including Land Use section.**

Held over until next meeting.

Motion to adjourn made by Kim Gruebling. Second by Eric Larsen. Motion carried by unanimous voice vote. Meeting adjourned at 9:57 p.m.

*Respectfully submitted by:  
Regina Ylvisaker, Clerk*

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

