

Town of Union PLAN COMMISSION MEETING Minutes of May 27, 2010

The Town of Union Plan Commission meeting was called to order Thursday, May 27, 2010 at the Eager Free Public Library, 39 W. Main St., Evansville, WI at 7:00 p.m. by Chairman Alvin Francis. Members in attendance included Chairman Francis, Vice Chairman Doug Zweizig, Eric Larsen, Renee Exum, Dave Pestor, Kim Gruebling, and Doug Lee. Also in attendance were Town Board Chairman Kendall Schneider, Supervisors George Franklin and Don Krajeck, Clerk Regina Ylvisaker, Building Inspector Bob Fahey, and Town Attorneys Matt Dregne and Lis Howard.

Approve April 29, 2010 Plan Commission Minutes

Minutes were taken by Matt Dregne at the April 29, 2010 meeting. Per Kim Gruebling, language should be added to page 2, #5, to read "cost for third and subsequent violation." Eric Larsen noted his name had been misspelled. Motion to approve minutes of April 29, 2010 Plan Commission meeting with changes noted made by Kim Gruebling. Second by Eric Larsen. Motion carried by unanimous voice vote. Additions should be made to the June 3 Board meeting agenda per the April 29 meeting minutes.

Public Comment (10 minutes max/issue)

Renee Exum requested the Board consider appointing a back up minute taker if the Clerk unavailable.

Alvin Francis noted that the Rock County Dairy Breakfast will be held at Templeton Farms on June 5.

Doug Lee believes the Plan Commission needs to have a meeting to discuss only policy issues. Others are in agreement. Clerk Ylvisaker will work on scheduling a working meeting.

Election of officers

The positions of Chairman and Vice-Chairman are vacant and to be filled by election. Gruebling nominated Doug Zweizig; Zweizig does not feel he is able to commit to Chairman, but is willing to accept nomination for Vice-Chairman. Zweizig nominated Eric Larsen for either position; Larsen accepted the nomination. Lee nominated Alvin Francis for either position; Francis accepted the nomination. Larsen nominated Renee Exum; she declined the nomination citing concerns about time commitments.

Votes were cast, first for the position of Chairman. Alvin Francis received the most votes for the position of Chairman and is therefore elected. Votes were cast for Vice-Chairman. Doug Zweizig received the most votes for Vice-Chairman and is therefore elected.

Public Hearing: Review and action on request made by Daniel and Cheryl Johnson, 9327 Evansville-Brooklyn Rd, Evansville, WI for a conditional use permit. The applicants are requesting to house more than the allowable number of animal units per acre per the Town of Union Zoning Ordinance on their 3.96 acre parcel located in the NE ¼, SE ¼ of Section 17, parcel #6-20-135.2. The request was tabled at the April 29, 2010 Plan Commission meeting pending further information.

Exum distributed a copy of the draft Conditional Use Permit to the Plan Commission a few days prior to the meeting.

Public hearing opened at 7:23 p.m.

Johnsons requested clarification of what the difference is between item #2 and item #6 on the draft CUP. Matt Dregne stated it is his understanding that item #2 requires an annual notification to the Town and the Rock County Land Conservation Department of: (1) the number of animal units on the property during the preceding year; (2) the name of the owner or operator of the land where manure will be disposed, and evidence that disposal of manure on such land is allowed by the applicable nutrient management plan and in accordance with NRCS 590. Item #6 discusses a "review" which is a State requirement that happens every 4 years.

It is unclear what specific State statute or code relates to the review requested in item #6.

Public hearing closed at 7:40 p.m.

Motion to approve the request made by Daniel and Cheryl Johnson, 9327 Evansville-Brooklyn Rd, Evansville, WI for a conditional use permit to house more than the allowable number of animal units per acre per the Town of Union Zoning Ordinance on their 3.96 acre parcel located in the NE ¼, SE ¼ of Section 17, parcel #6-20-135.2 with the conditions set forth in the draft conditional use permit, including the stipulation that every 4 years a letter from the Rock County Land Conservation Department stating that there has been an onsite review of facilities and waste management plans and the facility meets all requirements related to the maintenance of animals and waste management set forth by the County and the State be provided to the Plan Commission made by Doug Lee. Lee asked the Johnsons if they understood the conditions; they stated that they understood. It was clarified that the stipulation outlined in the motion would replace the current item #6 under "Permit Conditions" in the draft CUP. Second by Dave Pestor.

Larsen voiced his concerns that the wording and specific requests may be incorrect, as the group only spoke to a representative from Rock County and not from the State. He is uncomfortable not referencing a specific statute or code.

Roll call: Alvin Francis - abstained; Doug Zweizig – Yes; Renee Exum – Yes; Eric Larsen – Yes; Dave Pestor – Yes; Kim Gruebling – Yes; Doug Lee – Yes. Motion carried 6-0.

Public Hearing: Review and approval of extension of existing Conditional Use Permit held by Candace Phelps, 13222 W. East Union Rd, Evansville, WI 53536 to operate a mining operation on her 138 acre parcel (6-20-97) located south of State Hwy 59 on the west side of N. East Union Road, Fire #10607. The gravel pit is currently operated by Aggregate Produced Products, Inc.

The Conditional Use Permit is technically up for renewal at the June Plan Commission meeting.

Public hearing opened at 8:14 p.m.

Francis reviewed the letter sent to the Franks by legal counsel dated February 9, 2010.

A complaint and report obtained from Brian Barbieur, Rock County DNR, was distributed to Plan Commission members by Exum prior to the meeting. Regarding the complaint and report, Brett Frank stated that when Barbieur was at the pit it was windy, the fields nearby were dusty as well

and Barbieur noted that also. According to Frank, the smallest pile on the lot is the one that was generating the most dust, and only when the wind gusted 40-50 miles per hour. He has tarped the piles; they do water but it dries out when it's windy, and doesn't last long on the roads when they put it down. The pile he tarped is designated for the Dane County Airport, "airport sand", and it has to be kept as clean as possible per their regulations. Frank stated the two fine sand piles were Barbieur's main concerns. Frank also stated he has sold all his trucks, to comply with the Board's decision that trucks for hire may not be run out of the pit location as part of the current conditional use permit. Lee stated that Frank is responsible for all trucks that are entering and leaving his property, and the trucks should not be allowed to leave the property without a tarp. There may not be a tarp law, but the permit states that he is responsible for ensuring the trucks are tarped. Frank stated that every truck that enters with a tarp leaves with one; those that don't have tarps when they enter don't have them when they leave.

Tom Davis, N. East Union Road, stated that dust and sand are constantly on his property and home. It is Frank's responsibility to water down the roads.

John Winburn, N. East Union Road, distributed pictures of trucks leaving the pit with no tarps. He reported that dirt has been spilled out of trucks along the road as well.

Beckwith, N. East Union Road: Stated he was in the hospital when the Class A road was put in and the driveway was moved in front of his home. If brakes failed on a truck it would go right into his barn. He had asked for a berm to be put in, was not done. The noise of the trucks is the biggest issue for him.

Tom Davis stated the berms have still not been brought up to the specifications; they are not 10-12 feet tall measuring from the road. He suggests the Plan Commission comes out to pit and meets, and measures the berm.

Building Inspector Bob Fahey stated he did not measure the berm area that is in question but can do so.

Larsen questioned why the berm is being measured from the outside of the pit, if the purpose of the berm is to keep sand and dust in he would think that it should be measured from within the pit.

John Winburn stated that Barbieur wanted to know anytime there is a problem with blowing sand, air quality problems, etc. Any neighbor should know that they can contact him. Lee feels that the County/DNR has to be the one to act on air quality complaints, not the Town.

Rich Franklin stated he has lived in the immediate area his whole life, and believes that there will be dirt and dust blowing no matter what is done with berms or other methods of trying to reduce the dust. Doesn't think that there is as much sand coming from the pit as everyone thinks there is.

Tom Davis stated he has a letter from his insurance company stating they will no longer insure his home due to the blowing sand and dust.

Public hearing closed at 8:40 pm.

Zweizig believes he is hearing the pit operator not wanting to comply, arguing about conditions and stating that he doesn't have to do certain things. Lee thinks that the best information they

have is what is coming from the neighbors. Dave Pestor would like to see an effort made by the pit owner to fix the issues raised by the County and others prior to the meeting in June when the permit will be renewed. Lee thinks that the amount of open land needs to be remeasured prior to the June meeting.

Exum noted portions of the General Permit Conditions for Construction Permits issued by the DNR, specifically in section C:

“C.1. No person may cause, allow, or permit particulate matter to be emitted into the ambient air which substantially contributed to exceeding of an air standard, or creates air pollution.

C.2. No person may cause, allow, or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne. Nor may a person allow a structure, a parking lot, or a road to be used, constructed, altered, repaired, sand blasted or demolished without taking such precautions. Such precautions shall include, but not be limited to the following:

- b. Application of asphalt, oil, water, suitable chemicals, or plastic covering on dirt roads, material stockpiles, and other surfaces which can create airborne dust...
- d. Covering or securing of materials likely to become airborne while being moved on public roads, railroads, or navigable waters.”

Exum also noted the Fugitive Dust Control Plan, specifically item 4:

“Truck Traffic:

- A. On-site: vehicles shall be loaded to prevent their contents from dropping, leaking blowing or otherwise escaping. This shall be accomplished by loading so that no part of the load shall come in contact within six (6) inches of the top of any side board, side panel or tail gate, otherwise, the truck shall be tarped.”

Zweizig noted the Reporting Requirements listed in the General Permit Conditions, specifically D. 1. b.:

“The Department shall be notified of the following events:

Event

Malfunction or other unscheduled event which causes or may cause any emission limitation to be exceeded.

Timing

Notification by next business day of any such event at the source which is not reported in advance to the Department. Report the cause and duration of the exceedance, the period of time considered necessary for correction, and measures taken to minimize emissions during the period.”

Upon questioning by Zweizig, Frank stated that he did not report to the DNR the dates when the wind was blowing 40 miles per hour when sand was visibly blowing.

Lee thinks that Frank, as the pit owner, is not taking responsibility for what is going on in his business. Pestor would like to see what happens in the next 30 days. Lee might be willing to extend the permit if improvement is shown, but is unsure if issuing the permit for an extended period of time again is a good idea.

Francis asked Frank if there is a way that he could meet the dust emission requirements. Frank stated that he could pile his sand in the hole at the pit. Larsen thinks that Barbieur is the person that needs to handle the dust complaints; Francis feels the Plan Commission needs a report by next month from Barbieur that the issues are being handled. Francis would like the Town Engineer to inspect the road; cost is an issue that will have to be reviewed.

Larsen questioned who should enforce the tarp issue? Lee stated that State Patrol motor carrier enforcement should do it, and they should be contacted directly by neighbors if there are complaints.

Lis Howard reviewed possible procedures for next month's review/renewal. Two different approaches could be taken: one approach bases the renewal decision on the ordinance standards for granting CUPs per 17.18(6); the other approach bases the renewal decision on the conditions specified in the existing CUP and whether they are being met or not. The second approach was the more legally defensible approach of the two in Howard's opinion. Zweizig felt it might strengthen the applicant's case if they came next month with a plan for best management practices in hand. Lee felt someone, Chair or Vice Chairman, should contact Barbieur and ask for a particulate study prior to the next meeting; if it is part of their standards they must be able to measure it. Should also ask him to attend next month's meeting.

Exum asked if the Plan Commission could add conditions to the permit; Howard stated that conditions could be added, as long as they don't limit what they can do with the property, and the purpose of the conditions would be to allow them to meet ordinance specifications.

Regarding the berm height, Lee feels that the Board has set a standard, and the Plan Commission can't override the Board. Fahey will remeasure the berms to the property line. Don Moen stated the original reason for the 10" berm height was to block the view of the pit.

Exum stated she has checked on the Payne and Dolan pit in Town of Oregon, and she reported the Town stated that they have had no complaints about the pit. It has been operated very well and no piles are visible above the berms. It should be noted that there is not operation in that pit every day, and it is not a full time active pit. Exum also checked on the Stern Site in the Town of Oregon, and per the Town Clerk there have been no complaints for that pit either.

Larsen wanted to be clear to the residents to whom complaints should be directed: State Patrol should be contacted for truck tarp issues, Brian Barbieur/Rock County DNR should be contacted for air quality issues. Brett Frank also asked to be contacted with any concerns and provided his cell phone number 608-322-4981.

Public Hearing: Review and action on request made by Donald Maas, 7337 N. Pleasant Prairie Rd, Evansville, WI 53536 for a conditional use permit. The applicant is requesting a permit for a wind measurement tower to be located on parcel #6-20-247, a 40 acre parcel located in the NE ¼, NW ¼ of Section 30, to collect information for wind turbine feasibility in accordance with the Town of Union Zoning Ordinance section 17.03. The Tower has been installed under a previous Conditional Use Permit.

Notice was not sent out to the neighboring landowners regarding the public hearing and permit request; per state law the hearing cannot occur and the request will be tabled until the June Plan Commission meeting. Notice will be sent out prior to the June meeting.

Dregne reviewed the forfeiture issue. The Town Board met on the issue and felt that a forfeiture was proper, and the amount of \$20,000 was appropriate. Dregne has communicated this to the company but has not yet received a response from them.

Dregne noted that a problem with this specific request is that the person who owns the land is not the one who owns the tower. The Plan Commission might want to attach a condition to require that if the tower will be owned by someone other than the property owner, the responsible party is identified. The party that owns the tower is legally responsible for complying with zoning requirements. Zweizig states that characteristically, the landowner is indemnified from any liability or responsibility as part of the lease with the company. Dregne officially requested a copy of the lease pertaining to this tower from Gary Haltaufderheide, who was in attendance. Per Dregne, the Conditional Use Permit is like a zoning change so it is attached to the property, but his concern is who do you prosecute if it is necessary?

Review and possible recommendation to Town Board changes to ordinances including citation ordinance and related fee schedules.

Tom Alisankus was in attendance, and requested an additional month to provide the draft citation ordinance. He would also like to know what exactly the Town needs bond amounts for; if appears that they are needed for all violations. Dregne read in the decision from April's meeting minutes:

“Motion by Gruebling, seconded by Larson, to recommend approval of a deposit schedule with amounts as follows: \$100 forfeiture plus costs for a first violation, \$200 plus costs for a second violation in 3 years, and \$500 plus costs for a third and subsequent violation in three years. Motion was approved on a voice vote.”

Review and discussion of possible amendments and updates to the Town of Union Comprehensive Plan, including long/short term development designations on maps.

Motion to adjourn made by Kim Gruebling. Second by Doug Lee. Meeting adjourned at 9:52 p.m.

Respectfully submitted by Clerk Regina Ylvisaker.

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