

**Town of Union
PLAN COMMISSION MONTHLY MEETING
Minutes of February 23, 2012**

The Town of Union Plan Commission monthly meeting was called to order at 7:12 p.m. on Thursday, February 23, 2012 at the Evansville Fire Station, 425 Water St., Evansville, WI by Chairman Alvin Francis. Members in attendance included Chairman Francis, Vice Chairman Doug Zweizig, Eric Larsen, and Renee Exum. Dave Pestor was absent. Town Chairman Kendall Schneider, Town Supervisors George Franklin and Kim Gruebling and Attorney Matt Dregne were also in attendance. Clerk Regina Ylvisaker was absent on maternity leave.

Approve January 26th meeting minutes

Doug Zweizig pointed out a typo on page 6 of the January 26th meeting minutes. The 3rd sentence in the paragraph beginning with "In Section 5" should read:

The alternative analysis was left **in**, but the alternative analysis only applies for other types of towers, for example radio and television.

Motion to approve the minutes of January 26, 2012 as corrected by Zweizig/Larsen. Motion carried by unanimous voice vote.

Public comment (10 minutes max. per issue)

Alvin Francis spoke about his public comment at the last board meeting concerning the Midway Trailer Court and the emergency shelter they had asked for. He also noted that Rock County Emergency Management is conducting classes for Tornado spotters in Janesville, March 6th from 1 to 3 PM and possibly another to be scheduled at the end of March. Francis also mentioned that he had read in the Review that 50 years ago Mrs. Montgomery had a meeting with the city council and the school board to put a fallout shelter underneath the gym in the new High School plan.

Public Hearing: Review and Recommendation to the Board Action on Request made by the Pleasy R. Berg Trust, 201 E. Main St., Evansville, WI to change the zoning classification of parcel 6-20-280A.2, located at 6528 N. Hwy. 213, Evansville, WI in the W ½, NE ¼ of Section 34 from A-1 to A-2.

This was brought up at the last meeting. This is a bookkeeping procedure to make the parcel the proper zoning.

Public hearing opened at 7:06 PM. Hearing closed at 7:07 PM.

Motion to recommend to the board to change the zoning classification of parcel 6-20-280A.2, located at 6528 N. Hwy. 213, Evansville, WI in the W ½, NE ¼ of Section 34 from A-1 to A-2 by Larsen/Zweizig.

Renee Exum asked if they needed an actual application procedurally for the record. It was determined at the January Plan Commission meeting that an application wouldn't be needed.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Eric Larsen – Yes; Renee Exum – Yes; Motion carried 4-0.

Public Hearing: Review and Recommendation to the Board Action on Request made by the Pleasy R. Berg Trust, 102 E. Main St., Evansville, WI to remove the lowland conservancy overlay district (C-1) designation from parcel 6-20-280A.2, located at 6528 N. Hwy. 213, Evansville, WI in the W ½, NE ¼ of Section 34. The purpose of the request is to allow for expansion of existing A1 buildings for ag use only.

Alvin Francis clarified that this request has been changed to part of the parcel.

Eric Larsen thought that there was going to be some kind of confirmation with Rock County that the study provided by Roger Berg was accurate and that the part of the parcel in question could have the conservancy overlay removed. Francis said that he had talked to Colin Byrnes from the Rock County Zoning Department. Byrnes had some questions about the depth of the study. Byrnes said the engineer that did the study had some of the best credentials for studying wetlands. The engineer was present at the meeting to answer questions.

Public hearing opened at 7:12 PM.

Berg reviewed the reason he was making the request. This all transpired after he applied for a building permit for an agricultural building. Building Inspector Bob Fahey informed him that there was a C-1 designation on the parcel that would have to be removed before a building permit could be issued. Berg was not aware that there was a C-1 overlay. Berg was told by Ron Combs to contact Jeff Kramer for a Wetland Delineation Study. He had done that many months ago. Berg is requesting that the land north of the wetland line have the C-1 overlay removed and the remaining parcel continue to have the conservancy overlay left on. Berg said he followed the proper procedures for what was required to accomplish this. Berg also stated that Byrnes from the county had questions about the subsoil on the parcel and no one seemed to have the answers for those questions.

Jeff Kraemer, Wetland Ecologist from Stantech, Cottage Grove, WI introduced himself to the commission. He has completed thousands of wetland delineations across the state and the Midwest. About 6 years ago the DNR started up a Wetland Delineation Assurance program. They evaluated the credentials of Wetland Delineators in the state. Only 7 in the state have met the qualifications that are DNR accepted. Kraemer is one of the 7. This means that the work that is done by one of these 7 Wetland Delineators is automatically concurred with by the DNR, with little or limited review. Kraemer did a Wetland Delineation study on Berg's property in October 2010 within a specific study area where Berg wanted to put up his building. Kraemer evaluated the soils, the extent of wetland hydrology and the dominance by wetland plants. You need to have all three of those perimeters to have a regulatory wetland based on the state and the federal definition. The study shows that the upland area where Berg wants to put his building does not qualify as a wetland area and also shows the areas that do qualify as wetland areas. It's been marked and surveyed and mapped.

Kraemer showed the commission the map.

Francis said the biggest concern discussed at the last meeting was the C-1 overlay taken off of the total parcel. That now has changed to just the upland area, designated by a line on the map, with a portion in the south of the parcel being left in.

Berg expressed his frustration on how the county doesn't have updated maps.

Kraemer also commented that the Wisconsin wetlands are regulated on a state as well as a federal level. So, regardless of the conservancy designation, you can't build on any wetlands without approval from the Army Corps of Engineers or the DNR.

Hearing closed at 7:19 PM.

Zweizig wanted to know how pasturing cattle on conservancy land is regulated. Kraemer said pasturing it's not a regulated activity. Grazing on a wetland area will change the vegetation over time.

Zweizig also noted that if they were to approve this, the part that is buildable, they would need a clear map for the record.

Kraemer had a copy of the survey and pointed out the areas that Berg wanted the C-1 overlay removed from on Figure 4.

Attorney Matt Dregne suggested that to move forward with the request that they give a copy of the document to the commission to include with their recommendation to the board. Then a copy of that document could be incorporated into the ordinance the board adopts for removing the C-1 overlay district from the designated area.

Larsen asked how the C-1 overlay got on the parcel. Kraemer said he thinks it was more of a soil mapping. You want to avoid filling soils that are susceptible to flooding.

Larsen asked how the Army Corps of Engineers would know about building on a wetland parcel. Kraemer said on smaller projects it's usually triggered at the town level.

Renee Exum asked Kraemer what the soil ground water depth was in the upland area. Kraemer said it's greater than 18 inches. Exum said that according to Rock County Land and Water Management Plan areas in elevated ground water are less than 3 feet to the surface, and shallow soils are susceptible to ground water contamination also. Kraemer said that the upper area is filled. The ground water was 4 ½ feet below the soil.

Exum asked if this was a water quality area. Kraemer said he doubts if it is. Exum stated that there is a private well on the property and wondered if the well would be a conduit for groundwater contamination. NR 151 list sites within 250 feet of a private well are susceptible to contamination. Exum is concerned about removing an overlay that is there to protect the health, safety and general welfare of the township and contamination of the groundwater. Exum also has runoff concerns from livestock. Kraemer said that the conservancy overlay doesn't prohibit "cattling". Berg just is looking to put up a pole shed at this time and that wouldn't introduce any groundwater contamination. NR151 only applies to land surfaces that over one acre, the building site on the Berg property is about ¼ acre.

Exum also spoke with the staff at Rock County Land Conservation and their opinion was that the ground water is elevated in that area. Zweizig asked what does that mean, "the ground water is elevated". Exum stated that according to the county the groundwater is less than 3 feet from the surface.

Zweizig asked Kramer if there is a risk to groundwater contamination with what Berg wants to do. Kraemer said there is not a risk in what Berg wants to do.

Exum said if you remove the zoning overlay, why do you we have zoning? It's to protect the

health, safety and general welfare of the citizens.

Kraemer said the building site has 3 feet of fill or more. Because of the pond and the road there is probably more fill than that in other areas than the building site.

Zweizig asked if the pond is a possible conduit to contamination of the groundwater. Is there a risk with having horses pastured on the property? Larsen pointed out that the concern is about a proposed building on the property.

Dregne said the original request has changed. The commission will have to characterize the recommendation to encompass the part of the parcel that is concerned.

Motion to recommend to the board to adopt an ordinance that removes the C-1 overlay district designation from the portion of the applicant's property to the north and west of the field of delineated wetland area shown on figure 4 of the Wetland Delineation Report by Zweizig/Larsen.

Exum asked that they have a copy of the report for the record. A copy was submitted.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Eric Larsen – Yes; Renee Exum – No; Motion carried 3-1.

Public Hearing: Review and Recommendation to the Board Action on Request made by Prairie Home LLC, 5440 Willow Rd., Ste. 101, Waunakee, WI 53597 to separate off 3.4 acres from the existing 156.4 acre parcel, 6-20-32, located at 17202 W. Holt Rd., Brooklyn, WI in the SE ¼, NW ¼ of Section 5. The resulting 3.4 acre parcel would be rezoned A-3 and the parent parcel would remain A-1.

Alvin Francis noted that the parcel requested to be separated off of the parent parcel was just west of the A-1 conditional use separated parcel that had the farm buildings on it.

Public hearing opened at 7:46 PM.

Kyo Ladopolous Oregon, WI had some updates to report since the last time he addressed the commission. They have an accepted offer from a farmer to buy the remaining farmland. Ladopolous spoke to neighbors and they haven't any problems with him building a home on the proposed A-3 parcel.

Francis said he did the math on the acres and he got 3.79 acres going to the middle of the road. Nick Ladopolous said the acreage listed in the request excludes the right of way.

Renee Exum and Doug Zweizig asked Kyo Ladopolous if the house to be built on the proposed A-3 parcel was for personal use or for selling. Ladopolous said it was for personal use.

Eric Larsen asked for clarification if the remaining parent parcel that has an offer to purchase includes the A-1 conditional use parcel already separated. Nick Ladopolous said no.

Public hearing closed at 7:49 PM.

Larsen stated that the main issue he has with the separation is that in the ordinance under

conditional use separations, they don't have any justification to approve the request. The ordinance says that under the conditional use permit there couldn't be further divisions on the remaining land unless it complies with the Town of Union development plan. He hasn't seen any proof that this separation complies with the development plan.

Attorney Matt Dregne had a question about the language in the ordinance whether it said further developed or further divided. Dregne says this particular request is for a change in zoning and he believes the commission has the authority to do that, and that decision would need to be consistent with the comprehensive plan. Dregne said the thought the language in the ordinance was referring to the remaining A-1 parent parcel after the earlier conditional use land division and whether there was a limitation to further develop that parcel while it retains its A-1 zoning. The request before them today is to change the zoning of a parcel from A-1 to A-3.

Francis asked for clarification about the buildings on the parcel. Part of the old farm buildings are on the new parcel. The buyer for the farmland doesn't want the buildings.

Zweizig said that in May of 2011, Kyo Ladopolous indicated that an alternative to separating off an A-3 parcel would be to remove the buildings and bring in top soil to return it to farmland that would then be of interest to the farmer. Nick Ladopolous said there is a lot of gravel and previous foundations in this area and other buyers were not interested in that being part of the farmland.

The parcel is not in the smart growth residential area.

Exum referred to a document that recapped what they had done in the past with similar requests. The commission approved similar separations by putting a deed restriction on the remaining A-1 parcel for no further development. Dregne said he did recall drafting a zoning ordinance in the past that was structured in that way. This condition would need to be reflected in the recommendation to approve the request to the board.

Francis said he supported the A-3 zoning change because of the soil type and it also has part of existing old buildings on it. He doesn't agree with a deed restriction.

Exum said they have already set precedence in the past with the deed restrictions.

Larsen referred to the document he prepared that recapped their past actions on similar divisions.

Dregne was recalling what the deed restriction meant. Larsen stated that the parcel could not contain any dwellings, agricultural structures would be fine. Dregne said if the commission's recommendation will be contingent upon the deed restriction, there will be some costs incurred and the applicant should be asked if they are willing to move forward with their request.

The applicant said they feel they don't have a choice because they have a contract with the buyer for the remaining A-1 parcel.

Zweizig stated that in May when the applicant approached the Plan Commission, the commission said the burden of whether or not the request for separation of this parcel was appropriate rested on the applicant to make the case.

Motion to recommend to the board to approve the request made by Prairie Home LLC, 5440 Willow Rd., Ste. 101, Waunakee, WI 53597 to separate off 3.4 acres from the existing 156.4 acre parcel, 6-20-32, located at 17202 W. Holt Rd., Brooklyn, WI in the SE ¼, NW ¼ of Section 5. The resulting 3.4 acre parcel would be rezoned A-3 and the parent parcel would remain A-1. The approval would be contingent upon receipt of a conversion fee and the receipt of a deed restriction restricting any further development on the 153 acre parcel by Larsen/Zweizig.

Larsen asked Dregne if the town board could remove the deed restriction. Dregne said they could but their decision is subject to the Comprehensive Plan. They may have a different understanding of what the plan requires.

Exum doesn't have any problem with the A-3 designation; it's the remaining property she's concerned with. Larsen said he looks at this as how it affects the township as a whole.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Eric Larsen – Yes; Renee Exum – Yes; Motion carried 4-0.

Public Hearing: Review and Recommendation to the Board Adoption of Telecommunication Tower, Antenna, and Facilities Siting Ordinance.

Renee Exum recused herself from any discussion, development or action concerning the Telecommunication Tower, Antenna and Facilities Siting Ordinance. AT&T retained an attorney from the firm she works for to represent them.

Copies of the ordinance were available for the public. Changes were incorporated from the last meeting. Attorney Matt Dregne said after the last meeting he made the changes to the draft on January 27th, and the only other change since then was the addition of the word feet. The draft was available on the town website.

Hearing opened at 8:16 PM.

Dave Miller introduced himself as one of the owners from Litewire. The other owners were also present. Miller first saw the ordinance this week when it was sent to him by Eric Larsen and is testifying to explain how the ordinance would affect their internet service. He had concerns most specifically with Sections 14, 15, 19 of the ordinance. Miller went on to describe how Litewire works. They place a small radio antenna combination on a customer's residence that transmits back to an antenna they would have on an existing structure like a silo which then connects back to their main office which then connects to the internet. The signal that comes from their customers' radio antenna combination that connects to the antenna on the silo, is called unlicensed frequency from the FCC, like frequencies from a wireless router, baby monitors, cordless phones or garage door openers. They are very low powered frequency devices, the antennas on the silos in the Town of Union are running on an average of 2 kW per month. They are able to offer internet service at a low cost because they go on existing structures and use this unlicensed frequency technology. This doesn't mean it's unregulated; it's just that they can use these frequencies without having to pay the FCC to keep the costs down in the rural areas.

Miller went on to describe some of the sections in the ordinance that would negatively affect their company. Section 14 which starts talking about licensing on alternative support

structures, which mean silos, says that all telecommunication devices may not be located or replaced on alternative support structures without prior review or approval of the telecommunications device license. They interpret that to mean if any one of their devices needs to be replaced if it stops working, they would have to get approval to replace it. Unless they could get this approval in an hour this would create a problem for the customer. There are also instances when a device has been updated that would improve their service to their customers because it operates better. They would have to get another license because this is a new device. Miller stated that they heard the licensing fee has yet to be determined, but using a figure of \$100.00 per telecommunications device, on a silo that has 6 antennas/radios that could be a licensing fee of up to \$6000.00 per silo. That's only one cost in the operating expenses that they incur.

Section 15(2), line 988, Miller was concerned about the costs involved in an annual review. His conservative estimate was \$1000.00 per site per year. These are in no means all the costs they see. They didn't even mention the structural engineer that would certify the silo in Section 14(6).

Section 14(3) line 945, requires a radio frequency emissions report annually to demonstrate compliance with FCC adopted standards. Miller went on to say that basically all of the radio antenna combinations that Litewire puts on their customers' houses, according to this section, would need to be licensed because those devices have not been exempted like TV antennas and satellite dishes mentioned in Section 3. One of the silos in the township has been in service for 7 years. There have been no complaints as far as safety, noise or eyesores. Miller stressed that it seems that they are guilty until proven innocent every year with the emissions review and that type of thing. All of their devices are purchased from manufacturers and are within FCC specifications. Miller said he hoped that if the town felt that Litewire was using devices that were not up to FCC standards or that Litewire wasn't complying with the radio frequency emissions that the town would report Litewire to the FCC and let them handle it as opposed to Litewire having to prove that they're not in the wrong every year. Miller also feels that these fees would be burdensome to their business and a hindrance to competition for service for the citizens in the Town of Union. Feels that this ordinance will keep out the small companies, they can't afford it like the big telecommunication companies can.

Eric Larsen asked if Miller had anything to add about Section 19, since he mentioned it as an earlier concern. There was a discussion on whether Section 19 would actually apply to Litewire. Miller also had some confusion about some of the definitions in the ordinance.

Karen Woods, W. Holt Rd. wondered why the town would be regulating something that is already regulated by the FCC. She was also concerned about increased costs to the residents of the rural areas for internet service. Woods said she felt it was very ingenious of Litewire to put antennas on silos and went on to comment that Litewire's antennas aren't noticeable.

Jim Dorsey, East Union Rd. wanted to know what the motivation was behind the ordinance. Was it the aesthetics, the height or location on someone else's property? He hoped to hear some more from the commission and AT&T about this. Dorsey further stated that maybe there could be some clarification in the wording in the ordinance to help Litewire. Francis replied that most of the concern was about the aesthetics, the heights, lights, large towers versus shorter towers and the compliance with the FCC radio frequency emissions. Doug Zweizig pointed out that the intentions are laid out clearly on pages 3 and 4 of the ordinance. The recital section lays out why the commission is doing this as well.

Dorsey wondered if existing structures less than 199 feet could just be waived in or excluded.

Daria O'Connor 8147 North Evansville-Brooklyn Rd. said she had started attending meetings concerning the ordinance approximately 8 months ago when she learned that there was a proposed 250 ft. tower to be placed on the property adjacent to her property. The Plan Commission had spent several months determining a proper setback for these towers. The commission had earlier determined that for a tower over 199 feet the setback should be 1320 feet from a neighboring property line. The reasons for this setback distance were valid and it shouldn't have changed. An industry representative requested a lesser setback and it was reduced. The impacts supporting the original setback included the noise associated with operations, maintenance and emergency generators. Will truck traffic and maintenance be allowed 24 hours a day? O'Connor realizes that the Plan Commission had been tasked with coming up with an ordinance regulating an industry that is ever changing and evolving and how difficult that has been. With each advancement in technology more power will be required, that makes the argument for the 1320 foot setback prudent. The AT&T representative at the last meeting stated that the 1320 foot setback would zone out telecommunication towers in the town, this statement was invalidated when the representative then stated he could place the tower across the highway. The property is owned by the same hosting landowner. Distance seems to be the best way to protect the taxpayers from the adverse effects of improperly placed towers. O'Connor asked that the Plan commission reinstate the 1320 foot setback for towers over 199 feet.

Jon Erickson, Forest Hollow Lane said his beef isn't with the tower heights or the setbacks, nor is it with Litewire. Erickson feels we need more choices in the rural areas for internet service. Erickson currently has Charter and has incurred many problems. Erickson has nothing against Litewire but he lives on a wooded lot so that service wouldn't work for him. He wants better service and more choices.

Mary Libby, Cain-Libby Rd. wanted to thank Litewire for their service and support to Evansville, especially to Creekside Place and their IT project. She is also a property owner where the proposed AT&T tower is to be erected. Libby is disappointed that the distance of 1320 feet was reduced to 660 feet. She noted that the noise, aesthetics, and the devaluation of property were a concern. She understands the tower could be moved to south of County Rd. C where there are no dwellings or opposition. Libby concluded by saying that she currently has an AT&T bundle which works fine.

Tris Lahti, Territorial Rd. stated that Litewire is an excellent company. They were one of Litewire's first customers. Lahti had tried satellite internet service for internet when he had first went off dial-up and they didn't accommodate his needs very well. He was happy when Litewire was eventually able to provide him internet service by getting on a silo. Litewire has very reliable service. To note he has no other option where he lives. As for AT&T, reception for their cell phones in this area is terrible. He would love to see an AT&T antenna here for his cell phone. Lahti concluded by noting that sometimes when there are regulations made for one, someone else may get dragged into an issue when they may not be creating the potential problems.

Janette Klaehn, North Robert Drive said she wanted to be honest. They had bought their house and then watched the cell tower go up on Highway M. She has to look at it every day and dislikes the appearance. Klaehn talked about the Town of Union wanting to preserve the rural character of the town for aesthetics. Klaehn stated she shares the frustration with AT&T and Charter, they have poor service. Klaehn is concerned with the placement of

towers rather than the service providers. That's what the ordinance is really looking at. Klaehn asks that the town looks to place the towers in the truly rural areas of the town, not in areas that have higher valued properties. The FCC regulates services and the town regulates the placement of towers as she understands it. Considering the heights, lights, aesthetics and other issues that were talked about, the 1320 feet setback is being very reasonable. In addition, looking for placement in the truly rural areas instead of adjacent to residences would be ideal. Klaehn would also like the ordinance to accommodate the smaller companies like Litewire that provide an alternative to the telecommunication giants. The use of existing structures that are obsolete doesn't provide a challenge to the rural character of the town.

Kelly Gildner, Hwy 14 spoke about the great service she gets from Litewire. She can call Litewire after hours and get service. Their business cannot be without the internet.

Shane Begley, AT&T representative reviewed about how he came to the town to apply for a tower. He couldn't submit his application because the town had a moratorium on tower installations while the Plan Commission was drafting a tower ordinance. Begley stated that he offered to help the town by submitting 3 ordinances to the Plan Commission as suggestions that he felt were fair to the industry and the people in the community. Begley had participated in the rewriting of those 3 ordinances and had 15 years of experience in this industry. Begley stated that much of the ordinance presented for the public hearing contained restrictions from an ordinance in the eastern U.S. When he first looked at the ordinance he said he could work with it, but there were things in there that weren't needed. Begley had a concern about the 1320 foot setback. Begley said yes they could move the tower from the proposed location to the location across the road but it would be behind a housing development in plain view. The proposed location is behind a tree line. AT&T's main intent was to get service to the city of Evansville, but the city wouldn't work with them on tower locations, there were historical district concerns and nothing was tall enough to co-locate on. That puts a lot of restriction on the placement of the tower in the town. Begley acknowledged that no one wants a tower in their backyard. He understands that, every community is the same. In this case the need for AT&T is a tower 250 feet high. If they don't have a tower at 250 feet the service wouldn't be what's needed to penetrate the city. The tradeoff is one tower with lights that you see at night, or several that are shorter that you see during the daytime. Begley's opinion is that the ordinance is restricting towers from being built. Begley feels that the ordinance is asking companies to compromise their system and the integrity of what they're putting out there. The cost of the fee for drafting the ordinance should not be passed onto the initial carrier. Begley stated that the Telecommunications Act protects the industry in a lot of areas as far as human safety and those kinds of things. Begley wanted to help the town do it right the first time and eliminate the need for more towers. They are willing to work with the commission to rewrite the ordinance to be more accommodating to everyone in the room. Zweizig asked how Begley suggests they accommodate his needs. Begley stated that Section 19 and the fees was the big one and they could live with the setbacks of 660 feet as a compromise. What they really want is the height of the tower plus 25 feet. That would be more realistic with the industry.

Steve Ritt, attorney representing AT&T spoke next. AT&T asked his firm to access the ordinance. Their original application was subject to the moratorium. AT&T has been waiting patiently for the better part of the year to bring this site before the commission. Ritt doesn't understand the Master Plan requirement. He doesn't know where it plays in the application requirements. He isn't sure what would be allowed to be built in the town. Ritt said he sees a half a dozen instances where the town may be in violation of the Telecommunications Act because they put you as a township in the place of the FCC. Ritt said he has reached out to

Attorney Dregne. Ritt said if the commission recommends to the board to approve this, they're heading for a train wreck. He's hoping they still have an opportunity to work together to come up with a solution that protects the town but is also understandable and fair to the applicant. Ritt's opinion is if they put that ordinance in place tonight they will harm Litewire and AT&T.

Kendall Schneider wanted to read into the record the heights of telecommunication towers registered in the neighboring area. There was only one that was over 200 feet. Schneider read each tower location and submitted his findings to the clerk for the record. Schneider wanted to read this into the record because the town has heard repetitively that a tower has to be a certain height.

Janette Klaehn asked a question of the commission of what would happen if there is a new ordinance. Since AT&T's attorney offered to help draft this, and although he stated it would be for everyone's best interest, but she's not sure that this would be the case, she wondered if there would be another public hearing on that ordinance. Francis stated that there will be more public hearings.

Attorney Dregne explained that this is the first public hearing on this ordinance. Dregne was contacted by Attorney Ritt today. There were questions raised about the Master Plan and the timelines in reviewing the conditional use permits. Dregne noted that Ritt implied potential legal concerns. Dregne hasn't heard specifically what they may believe would be susceptible to a legal challenge. He would be interested in hearing what those concerns are to have an opportunity to look at it. Dregne had pulled out the ordinance and made some changes for clarification after the conversation with Ritt. He said the Plan Commission has listened to a lot of information tonight, and have to decide what they are going to do going forward. Concerns are costs to the town. Ritt offered to work with the town to take more time to revise the ordinance. The process should continue to be a public process. The commission should try to come up with an efficient way to identify the concerns they should be working on.

Francis feels they aren't ready to recommend to the board to approve the ordinance.

Paul Case commented that he had listened to a lot of intelligent people speaking, targeting the charges and fees when nothing has even transpired. Case also heard a question or statement that the town was taking the place of the FCC in many of the positions. Is the FCC in control and are they the ones that are supposed to make decisions on such things? Is the FCC going to come into the town and say you don't have the right to say this?

Keith Hennig, North Ridge Drive wondered, after he heard Kendall Schneider list all of the towers in the area that were U.S. Cellular's that if they had a different plan would they have all those towers? Hennig said he heard people comment on radio frequency issues. Hennig noted that if you had a cell phone you would hold it next to your head everyday and whether that's good for you or not, you would think if it was a health hazard it would be addressed by the FCC. Hennig heard comments about noise and feels it should be regulated by a decibel reading not distance. As for Litewire, Hennig wonders where the town all of a sudden can just start levying fines and taxes on people who are already conducting business in this territory.

Public hearing closed at 9:26 PM.

Francis asked the commission how they would like to proceed. Larsen said he appreciated

that Litewire came to the public hearing and wished the commission would have reached out to them earlier. The commission's intent was not to increase costs and place hardships on existing companies that is why they shared the ordinance with them before the hearing because they wanted their input. There appeared to be a gap in the regulating of these devices. The commission was addressing concerns from citizens and was trying to make sure devices are safe and sited correctly. Larsen continued to clarify that Litewire's antennas on a silo would be counted as one. Larsen further stated that they wouldn't want to have licensing of the receptors at people's homes. The concern was that the FCC regulates the emissions, but it's up to the municipality to enforce those. The FCC doesn't have field people checking out compliance. The commission just wants to get that emission information so they know what's going on. There were questions if the ordinance should only be about towers. Every agenda item stated telecommunication towers and antennas, so the charge from the town board clearly stated that the ordinance should regulate antennas as well as the towers. Larsen noted there was the question of why they changed the setbacks. The commission feels they have other means to control heights etc. with the alternatives analysis, requiring at least 3 sites in an application. The town wants to determine what the best site is. Larsen keeps hearing that the industry knows what the best site is. Larsen's opinion is that the concerns of the town are not being heard. The town doesn't want towers to be over 199 feet. The concern is not about the unsightliness of the base of the building, where the industry wants to put trees. It's the lack of consideration about the lights on the tower. Larsen has a problem with AT&T offering help with the ordinance since so far AT&T has ignored what the town wants. As for other alternatives for the internet, that is clearly defined in the Smart Growth Plan and the commission is trying to facilitate that. The town is not trying to prevent AT&T, Litewire or other alternatives from providing service. The concern from the town's perspective is to know what's going on with these companies and that the towers and antennas are properly sited.

Zweizig wanted to know how to distinguish Litewire's service from cell tower service. Dave Miller said Litewire has a lower power level. Zweizig noted that on page 8, they have many things that are exempt. If the word "television" in front of "antenna" was removed that would exempt Litewire's devices. This would only include the radio antenna devices at a customer's home and not on the silos. Zweizig asked if Litewire could help them with some language that describes the devices on the silos. Larsen again stated that their intent wasn't to be a financial burden for them but he would want to know about the devices, and wanted them to be licensed.

Dregne wondered if they could ask Litewire and AT&T to make a list of their specific concerns in writing. That would assist the commission in understanding what their concerns are. They could then try to find some common ground on how to achieve those goals and objectives.

Francis wondered how soon they can get the written comments. Ritt said by next week. Litewire agreed. Litewire also had a wording suggestion for their exemption. Larsen asked that Litewire send that into the Clerk. The commission agreed to continue working on the ordinance.

Motion to adjourn. Larsen/Zweizig

Motion carried by unanimous vote. Meeting adjourned at 9:48 PM.

Respectfully submitted by Deputy Clerk Cathy Bembinster.

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

