

**Town of Union**  
**PLAN COMMISSION MONTHLY MEETING**  
**Minutes of October 25, 2012**

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The Town of Union Plan Commission monthly meeting was called to order by Chairman Alvin Francis at 7:00 pm on Thursday, October 25, 2012 at the Evansville Fire Station, 425 Water St., Evansville, WI. Members in attendance included Chairman Francis, Dave Pestor, Bill Thomas, Ed Levin, and Eric Larsen. Chairman Kendall Schneider, Supervisor George Franklin, Building Inspector Bob Fahey, and Clerk Regina Ylvisaker were also in attendance.

**Approve September 27, 2012 meeting minutes**

Francis noted that he was incorrect in his statement regarding when he originally learned of the cell tower application; it was 2011 not 2010.

Motion to approve minutes of the September 27, 2012 meeting as written made by Pestor/Larsen. Minutes approved by unanimous voice vote.

**Public comment (5 minutes max. per issue)**

Eric Larsen stated that it seemed that there have been a lot of heated discussions lately within the Plan Commission and Board, and some personal attacks may have been made or inferred, but he wanted to be sure that people knew that although we may all disagree about the issues we are all here to work together. Larsen hopes no one takes anything personally.

**Public Hearing: Review and Recommendation to Board Action on Request made by Barbara George for a Conditional Use Permit for parcel #6-20-25, located in the SW ¼, SE ¼ of Section 4 at 11215 N. Hwy. 14, Brooklyn, WI. The applicant wishes to operate a dog kennel on the recently approved ~4 acre parcel pursuant to the Town of Union Zoning Ordinance Section 17.08 (3) (d).**

Public hearing opened at 7:07 pm.

Ryan George introduced the individuals who wish to purchase the property and operate the kennel (Lindners). Scott Lindner spoke to the Commission regarding their request. He explained that it is their intent for the facility to be more of a canine education center than a kennel. No more buildings would be built on the property, but they would like to renovate some that are existing. One building is unstable and they would like to take it down and replace it with a 24 x 40 building for training. The property is currently set up for cattle and pigs. The Lindners would like to get high school students who may be interested in a veterinary career or something similar involved in the operation; Oregon High School has a co-op program that would facilitate this. They would also like to do dog grooming, self dog wash, and doggie daycare, as well as classes in the evenings. To minimize noise, the Lindners plan to install baffles inside the building to absorb the sound, as well as privacy fencing. Dogs would be outside during the day, and by the time people are home from work they would be inside. Lindner stressed that they have every intention of being good neighbors, and don't want to cause any problems. They plan to take every step they can to avoid the issue of barking dogs. They like the location of the property on Hwy. 14, easy access in and out for customers. Would also be interested in helping the Town out with holding dogs if Rock County Humane Society stops taking canines. Would like to be able to board up to 20 dogs at one time, plus doggy daycare which would be about 20 dogs. Daycare dogs would be taken from 6 am – 6 pm. They would be living in the house on the property, and their purchase is contingent on the approval of

the CUP. Francis asked how they intended to deal with the waste; Linder plans to compost the waste, as they would like the whole operation to be as “green” as possible.

Dick Pharo, lives just north of the property in question. Wanted clarification that tonight was only a recommendation to the Board. Knows that dogs don't bark excessively, but in a group setting one or two can get the whole group barking and they can then be hard to calm down. Pharo also noted there are coyotes in the area which howl at sunset; he expressed concerns that this may start the dogs barking. Regarding the proposed hours of operation of 6 am – 6 pm; both Pharo and his wife are retired and are not up at 6 am, and don't want to hear dogs that early in the morning. He is also concerned that vehicle traffic in and out of the property will also excite the dogs and get them barking. Regarding kenneling, many people will be leaving their dogs over the weekends when they are gone, making it a 7 day a week issue. Regarding training, and dogs with behavior problems, barking and fighting will be issues as some people might not be able to contain their dogs. Concerned that loose dogs could be on his property when his grandchildren are outside. Regarding baffling in the buildings, Pharo felt that may or may not work; won't do much good when the dogs are outside. Also concerned with traffic, crossing Hwy. 14 to enter their property at rush hour is difficult now and will only get worse. Regarding the dog waste, has concerns about the smell and prevalent south wind. Both Pharo and his wife are against issuing the permit with the information they have now. They also have concerns that it would be difficult to sell their property in the future with a kennel next door. Francis clarified that the permit, if issued, would stay with the property; so if it was issued to Barbara George at this time and the Lindners purchased the property, they would receive the permit.

Valerie Bridges and Julie Sutter, both neighbors living on Stewart Rd.: Bridges has a dog and has boarded her dog several times, and as such knows about the barking of excited dogs in a boarding situation. She also has concerns about the smell of dog waste, and concerns if the dogs get loose and onto her property. Bridges presented a letter to the Commission from a realtor stating that the kennel would negatively impact the salability of their home.

Sutter also provided information regarding home values. Has a dog as well, who is allowed to run on their property, and is concerned about her dog entering the kennel property to investigate the dogs being boarded. If noise did become an issue, she questioned who would make the decision on whether or not the dogs go inside. They walk their dog in the morning and afternoon, typically untethered, and they would not be able to do so any more.

Bridges is also concerned with traffic trying to go around cars entering the kennel, which is a problem she encounters now when turning onto Stewart Road. Francis asked if they feel there would be a big difference from the farm animals that were previously on the property; Bridges stated they had no prior issues with noise from the farm animals. Sutter stated the current fencing is set up for farm animals and dogs can get through it. Also verified that there are coyotes in the area and they were in the pasture on the George property last year.

Kristine Busche, Hwy. 14, also has concerns similar to those of the other neighbors. Moved to this area as it was a country setting. Concerned with property values being negatively affected. Also concerned with the experience of the individuals requesting kennel permit, they don't have any actual kennel experience. What would happen if the changes to the property are made to accommodate a kennel and the business fails, and the property sits empty for lack of another buyer? How would that affect their property value? Busche also has traffic concerns as do others. She owns two dogs and has concerns about her dogs barking at other dogs barking from the kennel. Also concerned with loose dogs, as they have a non-neutered male. They do

have an invisible fence installed but it would not keep other dogs out. Busche wondered if any of the dogs with behavior problems pose problems to people if they were to get out. She also asked what kind of lighting would be installed for evening training sessions, would it be industrial strength, and would it intrude upon their property. Concerned about people turning around in their driveway when they are trying to find the kennel, as well as concerns with the sound proofing. Overall Busche and her husband are against issuing the permit.

Barb George clarified that the land that borders the property of the neighbors is not for sale and will remain hers, and remain agricultural.

Lindner stated that he has 20 years of experience training dogs, and his wife has business experience as well. He does not believe the proposed business will fail. Lindner does not plan to install additional lighting. Regarding the concerns about barking dogs, Lindner stated that a phone call from a concerned neighbor would address any barking dogs, as he does not want to hear any dogs barking either. Regarding traffic, Lindner felt it would not be increased as the people dropping dogs off would be driving to Madison anyway. Would like to install signage to help avoid any people getting lost and entering other neighboring driveways. Regarding property values, they are in a customer service business and want to operate their business accordingly, and as such the property would not be shabby or run down. Lindner disagreed with the idea that the facility would reduce property values. Regarding loose dogs, he cannot guarantee it won't happen but felt it would be an unlikely occurrence. Would suggest that they could have a condition that dogs not be let out until a certain time of the day if that would alleviate concerns. Regarding other dogs entering the property, he would suggest bringing the dogs over so they can investigate. Larsen clarified that the concern is both dogs staying in and dogs staying out. Lindner stated a 5 foot chain link fence would be installed as well as a privacy fence so dogs can't see other things. Regarding the concerns surrounding the smell of waste, he could have it hauled out in a dumpster once or twice a week. Francis asked where a similar facility might be located. Lindner listed several: Country Roads; Spring Valley; Hound Huddle in Verona; Cherokee Kennels in Fitchburg; Old Stage Pet Lodge; Chesterfield Kennels. He reiterated that they would install insulation, baffles, privacy fences. Lindner has not spoken to the State regarding traffic; Larsen stated the concern is safety, not an increase in traffic. Could ask the State about a pull out across from the driveway.

Public hearing closed at 8:01 pm.

Larsen had the same concerns when the gravel pit went in near his home, and has had to learn to deal with the issues and accept the change. His real concern with this request is traffic safety. Francis would like input from people living by the other kennels mentioned. Thomas lives almost a mile from Chesterfield and stated the dogs bark, and he is unable to open windows at night. One dog starts barking and others will bark as well. Thomas stated they heard that a kennel would affect property values of the neighbors, and he thinks that a kennel would also affect their quality of life. The neighbors who spoke tonight live closer to the proposed site than he is to Chesterfield, and he doesn't think it would be fair to the neighbors to allow it. Dave Pestor also has concerns with traffic safety. He noted that there are certain things you have to deal with in the country, like living next to a dairy farm, pig farm, etc. However, he would like to know what the State thinks about the traffic issue and what impact it would have on commuters. Larsen noted that the Town did want commercial development on Hwy. 14. Ed Levin stated there is no perfect location for a kennel. Pestor lives near the Larson Dairy and the smell from that can be overwhelming, but he has learned to live with it.

Larsen believes the best thing to do regarding complaints would be to call the constable so they are documented and can be reviewed. Attorney Matt Dregne explained that complaints alone are not reason enough to revoke a permit. He noted that it is much easier to address concerns at this stage than later on once issues arise. Once the permit is issued, revocation is difficult. Failure to comply with clear conditions of approval would be grounds for revocation.

Items that the Plan Commission would like to review include a detailed site plan, a plan of operation that addresses 1) hours of operation, 2) hours dogs are outside/inside, 3) lighting, and 4) waste control. Dregne noted that when traffic is a concern, it is not unusual to have an evaluation/traffic study of the traffic done by a qualified person which would include ways to address issues.

Thomas asked how the negative effect on property values could be addressed. Dregne stated that some of the things outlined in the ordinance when considering conditional use permits includes "compatibility with adjacent land," which may address this issue. He recommended reviewing the Town's standards and deciding if the request is an appropriate use given the adjacent land usage. He also suggested asking the applicant to have a traffic study done by a traffic engineer that evaluates the impact of the operation on this section of the highway.

Larsen would like to see some of the things that Dregne suggested prior to making a recommendation to the Board. Items he believes the Plan Commission should have for review include a detailed site plan; a plan of operation including information regarding 1) what will be going on at what times, 2) drop off/pick up times, and 3) training class times; how issues including waste and related odors, and noise and noise complaints will be handled; type(s) of fencing to be installed and where; and a traffic study conducted by a qualified traffic engineer addressing safety, congestion, ingress and egress issues.

Motion to table the request until the November Plan Commission meeting, and to request that the information described be provided to the Commission members prior to the meeting for review, made by Pestor/Larsen. Motion carried by unanimous voice vote.

**Public Hearing: Review and Recommendation to Board Action on Request made by Tom and Donna Sayre, 5911 W. Pomeroy Rd., Edgerton, WI for a Conditional Use Permit allowing the installation of a cellular tower on parcel #6-20-171, located in the SW ¼ of Section 21 at 16326 W. Cty. Rd. C, Evansville, WI. The proposed tower is 250' above ground level.**

Francis stated the issue was tabled at the last Plan Commission meeting. Applicants are in attendance tonight.

Public hearing opened at 8:27 p.m.

Daria O'Connor: questions regarding AT&T response to letter, they stated they explored St. John's Church, Seminary Park Apartments, a school in the City of Evansville, and a water tower within the City of Evansville. She would like the Plan Commission to ask the applicants when and to whom they spoke with regard to those locations. O'Connor spoke with the pastor at St. John's Church, who stated he had never been approached regarding locating a tower on the church. Does not think the Plan Commission's request has been adequately addressed. Additionally, O'Connor stated that Mr. Sayre stopped at her house yesterday to ask what she and her neighbors thought about the tower. She indicated that the intrusiveness of the towers and the noise from generators were their main concerns. Mr. Sayre stated that it was his understanding from his first contact with AT&T that the tower would be under 199' and not

lighted. Sayre indicated to her that the money he was to receive for having a tower located on his property was not important to him; she felt that was unfortunate because the tower will have a negative impact on the property values of many of his neighbors.

Mary Libby could not be at the meeting tonight but wanted O'Connor to pass along that she has emails in to Joe Francis and Heidi Carvin regarding their prior contact with AT&T. Joe Francis had responded that he had not been contacted directly, but thought a meeting had been held in May regarding the issue that he did not attend. Libby feels there has been a lot of misrepresentation, and wonders why no other alternatives have been presented although AT&T was aware of the Town's ordinance and its intentions.

Peter Hansen spoke regarding alternative sites; he questioned why the tower is being considered on private property and not Town owned land, specifically at the recycling center. Regarding land values, the Town of Rutland recently denied locating a TV antenna within their Town with one reason given for denial being a 5-15% drop in assessment value for properties located near the tower. Also noted a court decision which defined "substantial evidence"; Hansen thinks a drop in assessment value would be "substantial evidence." Hansen did contact the Town of Union's assessor to get their opinion but has not yet heard back from them. Larsen noted that there is a tower near the Piggly Wiggly, and there are lots being sold and houses being built right next to it, so he has a hard time believing a drop in assessment would occur with development like that currently happening in the Town. Larsen did note that the tower by the Piggly Wiggly is unlighted.

Doug Zweizig, Finn Rd., read in a letter from a number of residents which had been emailed out to Commission and Board members previously:

October 21, 2012

To: Town of Union Planning Commission

Re: Proposed AT&T Tower

A number of Town of Union residents have been concerned about the current application to construct a 250-foot tower in the Town and about the process that has been pursued in considering this application. We have reviewed resources related to this issue, have been attending the public meetings during the development of the Telecommunications Tower, Antenna, and Facilities Siting Ordinance of Town of Union Rock County, Wisconsin (hereafter, Tower Ordinance), and have presented a petition to the Town Board.

Article 1 of the Tower Ordinance states, in part:

"It is intended that the Town shall apply these regulations to accomplish the following:

- (1) Minimize adverse visual and sound effects of telecommunications towers, radio and television towers, antennas and related facilities through design and siting standards in order to preserve the rural character of the Township.
- (2) Protect the rights, health, safety, and welfare of the Town of Union citizens to the full extent of the Town's ability under federal law.
- (3) Protect environmentally sensitive areas and scenic view sheds of the Town of Union as depicted in the Town of Union Comprehensive Plan by regulating the location, design and operation of telecommunication facilities, including radio and television facilities."

We believe that the application before the Plan Commission does not comply with the Town's Comprehensive Plan or with Article 1 of the Tower Ordinance.

In an effort to assist the Plan Commission, we offer these points for possible use in a motion to reject the application:

- a. **Preservation of Rural Character.** The Town of Union Comprehensive Plan (2006) calls for preservation of the Town's rural character, and the proposed tower would conflict with that important goal. Towers over 200 feet tall would be out of scale with everything else in the Town.
- b. **Lighted Towers Undesirable.** The proposed tower would be lighted, changing the sky for nearby residents every night.
- c. **Preservation of View Sheds.** The proposed tower would be visible from much of the Town, including the nearby wildlife areas. The Town's Comprehensive Plan calls for the Town to consider the impact of development on the viewscape. (The proposed tower is adjacent to documented view sheds and will be visible from Magnolia Bluff County Park. The Magnolia Bluff County Park is just south of this proposed tower location, and in our opinion the proposed tower would be an "adverse visual" site from a County Park that is popularly known for its scenic views. It would also diminish the "rural character of the Township." There is also the Rock County-designated scenic drive and view shed area that is listed in the Union Comprehensive Plan that is very close to the proposed tower site. The 250' tower would be out of character with the scenic view shed.)
- ~~c.~~ **d. No Alternative Sites Considered.** The Tower Ordinance clearly calls for alternative designs to be proposed in order to select the least intrusive site and design that will meet service needs. The proposal does not provide alternative tower sites or designs. It only describes the inadequacy of existing structures and the non-documented and questionable claim that the City of Evansville would not allow a tower even though the proposed service is primarily to serve customers in the City of Evansville.
- ~~d.~~ **e. No Alternatives Proposed.** The Town of Union Tower Ordinance specifically asks for alternative configurations to be proposed. This application was prepared early in the ordinance development process and has not been adjusted to take into account the requirements of the Tower Ordinance.

We are supportive of quality cell phone service in the Town and believe that cell phone service providers are capable of proposing sites and designs that would comply with the Town's Comprehensive Plan and with the Tower Ordinance. This application clearly does neither.

A group of Union Township residents.

Jim Bembinster  
Cathy Bembinster  
Paul Case  
Laura Case  
Rodney Courtier  
Larry Csukardi

Ardis Csukardi  
Peter Hansen  
Chris Hansen  
Bill Heritage  
Pam Heritage  
Diane Hoerler

Rodney Leeder  
Kent Libby  
Mary Libby  
Nancy Nelson  
Daria O'Connor  
Jason O'Connor

Robert Peach  
Bryant Wethal  
Pat Wethal  
Doug Zwezig  
Ardis Zwicky  
Steve Zwicky

Zwezig then read in the following testimony:

In addition to points communicated on October 21 to the Commission by "A Group of Union Township residents," I want to add a final point that I think would invalidate any application to the Town:

**A Pattern of Misrepresentation in the Approach and Application.** AT&T and its representatives have repeatedly asserted that they came to the Town of Union only after exhausting other possibilities. After all, the purpose of this facility is primarily to provide service to residents of the City of Evansville, so that would logically have been the first place to look for sites.

For example, Shane Begley is reported in the Nov. 17, 2011 minutes of the Plan Commission meeting to say:

The current location proposed by AT&T for a tower within the Town was chosen due to the original location being located within the Historical District in Evansville and therefore not feasible. The main issue with coverage is that this particular tower is trying to address is building penetration within the City of Evansville.

At a Jan. 26, 2012 Plan Commission meeting, Shane Begley reported:

As soon as you drop the height down to 190 feet, you lose the east side again unless you move into Evansville. Evansville didn't allow the tower because it was in their historical district.

At the Feb. 23, 2012 Plan Commission meeting, Shane Begley explained:

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.

On Sept. 26, 2012, Evans Associates wrote:

The Evans report investigated possible site locations out to a radius of 2 miles from Evansville, well outside AT&T's search ring. Evansville indicated that it will not allow the tower within its incorporated populated area, forcing the tower into the rural area as proposed.

On October 3, 2012, the Plan Commission requested "written confirmation from City of Evansville officials" verifying what had been repeatedly claimed. On Oct. 19, 2012, a Regional Vice-President for AT&T Wisconsin wrote, in response, that they did not feel

obligated to provide evidence for these repeated assertions. And, while he does refer to contact with the City, he does not reveal that that contact was only the previous week.

We, however, can supply written confirmation. A number of Town citizens had met with Mayor Decker and City Manager Wietecha on April 24 and May 16, 2012 to understand the background with the City and learned that there was no background. I have provided to the Town Clerk correspondence with the Evansville Mayor from this Tuesday in which she says, "Dan and I did not speak to anyone about a tower on the west side of Evansville, until Dan's recent contact [referring to last week's AT&T contact]."

It is clear that this approach and application to the Town of Union is based on a pattern of falsehood and an unwillingness to act candidly with the Town to provide optimal cell phone service for the area. As you have heard from others, the claims for exploring other alternatives to providing service to Evansville residents are similarly fraudulent or deceptive.

In order for you to vote to accept an application, it must be acceptable. A lobbying and application process that contains misrepresentations cannot be acceptable. An application that does not meet the conditions of the Town's Comprehensive Plan or the relevant ordinances cannot be accepted. Ironically, this application fails to comply with an ordinance that the applicant insisted on helping to write!

Dregne stated that one thing that caught his attention was the propagation maps in the Evans report; the coverage in figure 5 appears to be as good if not better than that shown in figure 2, which means coverage at 190' is comparable or better than that at 250'. Regarding the Evans report, Dregne was struck that the report does not appear to provide analysis of coverage at this site or any other site with a 199' tower, which seems to be a significant omission given what the ordinance states with regard to height.

Steve Ritt, AT&T, stated that work on this site was in process prior to 2010. The standpipe located in the City of Evansville is zoned R1, so it would not be permissible for siting a tower at that location. He also indicated that the school property is also zoned R1, which would not permit locating a tower at that site. Ritt has no knowledge of the Seminary Park Apartments, but if it is in fact historic they can't change that. Regarding the church, he knows that contact was made with the church at some time during the last two years and they were not interested. After the applicant has spent time and money on a site and the residents don't like it, Ritt believes it is not reasonable to simply invest the same time and money in another site that more residents might not like the next time it is brought before the Commission for consideration.

Ritt would like to know if there is a solution to the major issues, which seem to be lighting and height. A shorter tower would likely necessitate more towers in the future. If that is an acceptable option for the Town and residents, Ritt would take that back to his clients for a decision to be made on their end.

Thomas expressed concern with the proximity to the Evansville Nursing Home, and the fact that Med Flight has to come in and land at the location and would have to navigate the tower.

Kendall Schneider stated there are sites nearby that could facilitate a tower, one being the Evansville Fire Station where there is already a generator on site. Additionally, Schneider reported learning from the Evansville Public Works Department that there is an available site on the water tower 157' above the ground. One more array can be located on the tower, per the

PWD. The standpipe is structurally unsafe and nothing could be sited on it no matter what the zoning was. Regarding land values near the existing tower by the Piggly Wiggly, Schneider noted that tower is not lit and is a monopole. Schneider also noted that he was recently on the T-Mobile website. They only have two towers in Rock County, and 46 in southeast part of the state. Of the 46, 33 are monopoles, 7 are stealth, and 6 are self supporting. Average height of the 19 towers closest to Union is 146', and the towers decrease in height to an average of 105' as they get into the Metro Milwaukee area. Larsen stated his point regarding land values was that one assessor's opinion is not the same as another regarding how and whether land values are affected. Schneider stated land values seem to be affected less in more urban areas than in rural areas when proximity to towers is the issue.

Hansen clarified that his concern is a tower in general on the property, not a 250' vs. 199' tower.

Public hearing closed at 9:37 p.m.

Pestor sees no reason for the 250' tower when the Town and residents would much prefer to have more, shorter towers.

Thomas would like the applicants to explore the Fire Department as a site. Dregne feels the site in question is the one that should be considered, not other possibilities such as the Fire Department.

Pestor thinks there has been too much misinformation and the application should be denied and they should reapply. Ritt believes a modification to the application would serve the purpose as well as a denial of the application as the only thing that would change is the height. Ritt stated that the idea of moving the tower to the Recycling Center or Fire Department had been looked at informally and neither would work.

Larsen questioned the need for an alternatives analysis if a 199' tower is proposed, per our ordinance.

Pestor thinks the application should be amended by the applicant, he is agitated that things have been misconstrued.

Dregne stated if the applicant submitted an amendment to the application, it would need to come back to the Plan Commission. Not sure if another public hearing would be needed; overall doesn't think the question should be answered tonight. Dregne thinks the applicant should submit an amended application, and the Plan Commission should decide at their next meeting if another public hearing is necessary, if Evans will need to review the amended application, and if the Commission wants Evans in attendance. The issue of the timing for reviewing the application is also an issue, as the Town 150 days to act on it, and the application was received on September 6.

Thomas thinks the citizens have a right to a public hearing if an amended application is received. Dregne stated that the time period can be extended if agreed upon by the applicant.

Motion to table the application until the next Plan Commission hearing, and to request that the Board approve having an independent consultant present at the next Plan Commission meeting, and that the Board approve authorizing Evans Associates to conduct an alternatives analysis evaluating and comparing existing structures including the east side water tower, Evansville Fire

Station, and Town of Union Recycling Center, relative to the proposed cell tower site on Cty. Rd. C made by Larsen/Levin. Motion carried by unanimous voice vote.

Attorneys Ritt and Dregne clarified that if the application was amended prior to the Town Board meeting, they would only need to compare to the 199' tower.

Motion to adjourn made by Larsen/Thomas. Meeting adjourned at 10:09 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.*