

Town of Union
PLAN COMMISSION MONTHLY MEETING
Minutes of November 29, 2012

The Town of Union Plan Commission monthly meeting was called to order at 7:00 p.m. on Thursday, November 29, 2012 at the Evansville Fire Station, 425 Water St., Evansville, WI by Chairman Alvin Francis. Members in attendance included Chairman Francis, Ed Levin, Eric Larsen, Dave Pestor, and Bill Thomas. Town Chairman Kendall Schneider, Supervisors George Franklin and Kim Gruebling, and Clerk Regina Ylvisaker were also in attendance.

Approve October 25, 2012 meeting minutes

Motion to approve the minutes of the October 25, 2012 as written made by Thomas/Pestor.
Motion carried by unanimous voice vote.

Public comment (5 minutes max. per issue)

No comments.

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 199' above ground level.

Public hearing opened at 7:03 p.m.

Francis explained the changes to the application, which were a change in height from 250' to 199', with the 199' proposed tower being unlighted.

The applicants addressed questioned received from Francis:

With the proposed tower, current service speed would be enhanced, and the tower would provide emergency services and base line services. 3G technology would be provided, as well as LTE technology. Unsure what the implementation date of 4G services would be, per Jim Jermain, but subscribers would need 4G devices to take full advantage of it. Shane Begley explained that all the towers in the service area would need to be turned up for 4G for it to take effect. Intent is to improve coverage for the Town and surrounding areas.

Francis cited the Town's ordinance (Section 5 (1) (l)) which states that the site must be the most reasonable of the alternatives. Steve Ritt, representing AT&T, stated that the height of the proposed tower was reduced from 250' to 199', lighting was removed, and an alternatives analysis was provided by the independent consultant, who recommends in their report (received today) approval of the proposed site after analyzing the alternative sites as requested by the Town.

Doug Zweizig, 6037 Finn Rd., read in the following statement:

This application is tangled in a number of complicated issues, and as a former member of the Plan Commission, I feel for your need to sort through these in order to form a recommendation. My attempt tonight is to clarify a couple of the issues. I'm going to focus on this use of the Conditional Use Permit process and on the impossibility for the

Plan Commission to recommend approval for the present application given the requirements of the Tower Ordinance.

The Conditional Use Permit process is being used for the review and permitting of this application, and therefore criteria related to Conditional Use Permits need to be applied along with the criteria laid out in the Tower Ordinance.

Section 17.06 of the Zoning Ordinance includes, "Telephone, telegraph and electric transmission lines, building or structures" as potential conditional uses in an A1 district. There is a requirement, however, that the Plan Commission can approve such a conditional use "only after finding that its inclusion in this district possesses a high likelihood of not creating problems with regard to nearby parcels of land or occupants thereof." You have heard testimony at recent hearings that tells you that this application does not meet that test. There have been calls from residents and Town officials for alternative sites that would not pose a problem for nearby land or occupants.

In addition, Section 17.18 contains a section called "Standards Applicable to Conditional Uses within the A1, A2, and A3 Districts" that includes "the availability of alternative locations" as a factor to be considered by the Plan Commission.

So recommending approval of a Conditional Use Permit requires, at a minimum:
1) the finding that problems are not likely to be created for nearby parcels and
2) that the availability of alternative locations has been considered.

However, this is not a simple Conditional Use Permit case. The application is not for a use on this property that is of primary benefit to the landholder. This is an application for the provision of a community facility. The point of this application is to provide improved telecommunication services to the Town, something that is called for in the Town's Comprehensive Plan and in the Tower Ordinance. This purpose—providing telecommunication services to the Town—is so important that the Town has developed a separate ordinance devoted to it. The current application fails to make the case for improved telecommunication services from the perspective of the Town; it makes the case from the perspective of AT&T. To comply with the Tower Ordinance, as explained in Section 1.00, Purpose and Intent, the application needs to speak to improved telecommunication services and adequate protection of the environment of the Town.

I earlier provided the Plan Commission and the Town Board with an explanation of the place alternatives analysis in the Tower Ordinance and why I think an alternatives analysis continues to be required from any applicant proposing to install a telecommunications facility in the Town. I'm not repeating the argument here and will be happy to respond to questions you may have about my position.

However, since it has come up, I want to speak to the observation that alternatives are only required for towers over 199 feet. This point is taken from Section 8.00 (2) Height, with its requirement for approval that "no feasible alternative exists to provide coverage" for proposed towers over 199 feet. So it is true that alternatives are required specifically in the case of towers over 199 feet. But the requirement for a tower application to include an alternatives analysis is found a number of places in the Tower Ordinance, particularly in Section 5.00 (1), and relates to applications for any telecommunication towers.

I must say at this time that I don't know whether the proposed tower is the best solution for providing improved service to the Town while preserving rural character and property values. I don't know if it is the best solution—and neither can you—because the application does not make the case. In order to comply with the Tower Ordinance (Section 5.0 (1)), you are required to recommend that the Town Board find “that the proposed site is the most reasonable among the alternatives.” It is impossible to make this finding from this application with its single-solution, “take it or leave it” proposal.

In sum, this application fails to meet the Conditional Use Permit conditions that problems are not likely to be created for nearby parcels and that the availability of alternative locations has been considered. It also fails to meet the Purpose and Intent of the Tower Ordinance by failing to explain how telecommunications services for the Town will be improved while minimizing negative impacts and also fails to provide the required alternatives analysis so that the Plan Commission and Town Board can find “that the proposed site is the most reasonable among the alternatives.” If the Town Board wishes to require such presentations to be included in future applications, it is important that they require them of the current applicant. After-the-fact explanations will not meet the requirements of the Tower Ordinance.

I therefore suggest that the Plan Commission deny the current application as not meeting the requirements of both the Zoning and Tower Ordinances and accept a later application that will include an applicant-prepared alternatives analysis that can be evaluated by the Town's independent consultant as called for in the Tower Ordinance.

Thank you for your time and attention.

Mary Libby, 16325 Cain Libby Rd.: Sees three entities who will benefit from this applicant, and twelve families in neighborhood who are opposed to the tower, who will be directly in the view of the tower at all times. The Plan Commission needs to take into consideration the rural character of the area and quality of life that will be affected by the installation of the proposed tower. Their neighborhood group has met many times and agrees that a tower would be acceptable within the Town, but feels there are better locations. Libby believes that Evans Associates has not been “independent” and has talked to the applicants but not to the neighbors of the site. She also expressed concerns regarding the nursing home and assisted living facility, both located in Evansville, who require MedFlight services and she fears for the safety of the MedFlight helicopter with regard to the tower.

Peter Hansen: stands behind the statements that Libby and Zweizig have made. In order to make the best decision with regard to this tower, there should be a sit down with all parties. Doesn't think that the Town is saying they don't want AT&T in the Township, but in order for the best decision to be made a meeting outside this forum should occur with AT&T, the Board, and the Plan Commission. Hansen met with Zweizig and AT&T representatives after one meeting, and learned a great deal about the telecommunications network. Thinks a compromise can be reached at a location where the tower can benefit the Town the most with the least number of people being affected.

Renee Exum, Cty. Rd. C.: feels her neighbors have raised good points and questions regarding the ordinance and the application process. The revised application for a 199' tower with no lights has addressed her concerns.

Public hearing closed at 7:27 p.m.

Thomas asked for permission to ask Begley for interpretations of the maps provided by Evans; ok by Francis. Begley and Ritt stated they would not interpret the maps provided by the independent consultant. Larsen explained that the maps seemed to show that the other alternative sites have poorer coverage overall than the proposed site.

Larsen noted that the Evans report stated that two additional towers may be needed to compensate for the drop in height, and he wondered why it was one additional tower previously and now it is possibly two. Begley stated he cannot say how many more towers may be needed, and it could be more than two.

Thomas felt that the proximity of the proposed tower location to the MedFlight path to the nursing home and assisted living facility is cause for concern to him. Also noted that the affect on the quality of life of the neighbors is an important consideration to him, as well as the drop in property values. Larsen stated that he has heard numerous times that property values would be affected, without any proof provided.

Pestor does not think that the ordinance is being followed by the applicant, and he is unable to decipher the maps provided by Evans Associates. Thomas feels that the Commission should act on the application tonight, there is a timeline of 150 days for the Town to act. Matt Dregne spoke to the timeline concern, and feels it is unclear. If the timeline were to run out without action being taken by the Town, the presumption could be made that the municipality hasn't acted in a reasonable amount of time when considering the application and the applicants could file suit as such. The 150 day timeline is significant, but if there are good reasons why the process would take longer the court would look at that. If it is possible to avoid going beyond the 150 days, the issue would be avoided. Dregne noted that any denial would have to be supported by significant, written evidence. He feels the Town needs to keep moving on the application, and recommends the Plan Commission holding a special meeting in December if they need additional time.

Francis noted that the conditional use standards cite the uses of land adjacent to the site, as well as the proposed site being the most reasonable among the alternatives, as two considerations for approval of a permit. The Town's independent consultant has stated that the other sites don't provide as good of coverage as the proposed site. Ed Levin wondered if any other farmers in the area were contacted, and if it was located further out of town and taller would it provide adequate coverage? Begley stated that the present location is right at the edge of their license area boundary. The current site is the optimal site given all the constraints. Thomas asked if there is something different with AT&T, as he has US Cellular and has coverage all over; Begley stated they utilize different bandwidths, different collocations, which all affect coverage.

Thomas has heard nothing that addresses safety concerns regarding MedFlight

Motion to deny, as it doesn't meet the Town's requirements as stated by Doug Zweizig, does not preserve the rural way of life for their neighbors and Town residents, and does not address safety concerns – specifically MedFlight, made by Thomas/Pestor.

Larsen would like to know if the applicants have a response to the safety concerns brought up; Levin questioned if anyone talked to MedFlight yet. Thomas stated that he is on the EMS board for Brooklyn, and the number one spot for MedFlight to go in this area would be nursing homes. Larsen stated that there are plenty of towers out there, so this issue must be addressed

somehow. Levin stated if it doesn't have to be lit it must not be an issue for FAA or MedFlight. They will land next to an accident whether there is a tower next to it or not; he does not think it is an issue. Pestor doesn't think the ordinance is being followed, have no alternative to the site per Section 5 – Conditional Use. Larsen noted that alternatives are not defined in Section 5, it only cites existing locations within the Township, which is provided in the report. He doesn't think that an applicant would read the ordinance any differently. Regarding preserving the rural character of the Township, Larsen questioned where in the Township a tower would not affect the rural character? A tower at the recycling center would be much more visible from Highway 14 than one located on County C. Larsen asked what the real problems are: health concerns, not proven; loss of property value, not proven; therefore we are left with people who don't want it in their backyard. Larsen didn't want a gravel pit near his house, but there is one and he has learned to live with it. Levin stated he feels that if the increased coverage allows one cell phone to work in an area that it currently doesn't work, and it saves a life through a 911 call, the tower is worth it.

Roll call vote: Ed Levin – No; Alvin Francis – No; Eric Larsen – No; Dave Pestor – Yes; Bill Thomas – Yes. Motion failed 3-2.

Larsen doesn't feel the ordinance, as it stands, requires the applicants to provide an alternatives analysis with the tower height lowered to 199'.

Motion to recommend to the Board approval of the request made by Tom and Donna Sayre, 5911 W. Pomeroy Rd., Edgerton, WI for a Conditional Use Permit allowing the installation of a 199' cellular tower on parcel #6-20-171, located in the SW ¼ of Section 21 at 16326 W. Cty. Rd. C, Evansville, WI, based on the recommendations of Evans Associates and the fact that the application is consistent with the Town's Telecommunications ordinance, made by Larsen/Levin.

Roll call vote: Ed Levin – Yes; Alvin Francis – Yes; Eric Larsen – Yes; Dave Pestor – No; Bill Thomas – No. Motion carried 3-2.

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 8:05 p.m.

Ryan George, representing Barbara George, stated that the individuals who wish to buy the property and run a kennel business have 16 years of experience with the Dane County Sheriff K-9 unit training dogs. They are good citizens and want to be good neighbors. Knows neighbors have voiced concerns about the request, but George has seen no facts. Could be concerns no matter what, as has been evidenced earlier tonight with reference to a gravel pit. George feels they have been up front about the issue, and addressed all concerns. Most concerns seemed to be regarding the traffic during last month's public hearing; Mark Westerveld, with the Wisconsin Dept of Transportation, stated that the DOT requires a traffic impact analysis when the property/business generates 100-500 vehicles during peak traffic hours. This proposed site will not generate anywhere near that amount of traffic. Francis asked if he didn't think that traffic was a safety concern; George stated that the DOT is not concerned and it is a state highway, not a Town road. Thomas stated that the Lindners have stated they wanted to run a doggie daycare, when people would be dropping off and picking up at the peak

traffic hours. George noted that the DOT was aware of that and still did not feel a traffic impact analysis was necessary.

Francis had questions for Scott Lindner regarding the hours of operation. Francis had contacted the other kennel sites listed at the last meeting regarding their hours of operation, and none of them opened before 7:30 a.m.; Lindner proposes opening at 6:00 a.m., and he feels it would break up the rush of people coming all at the same time. The 6:00 a.m. start time would be for dogs attending doggie daycare, and Lindner stated the dogs could be kept inside until a later time, 7:30 or 8:00. Larsen does not want to get involved in his business plan, he is only concerned about following the Town's ordinance and thinks citing the Town's noise ordinance in the permit would be appropriate.

Francis has concerns regarding compatibility with land uses on adjacent land, as there are houses fairly close to the proposed site. Lindner noted that the State of Wisconsin classifies dogs under Department of Agriculture, and there are no rules regarding kennels, only dog breeding. Larsen questioned what the land uses on adjacent land would have to be for a kennel to be compatible; kennels are listed as a conditional use on A1 parcels, which this is. Francis looked up other kennels in the area, they tended to be surrounded by trees but there are houses nearby. Noted that the reason it is a conditional use is because the compatibility of the neighboring lands needs to be taken into consideration.

Lindner addressed the issue of dogs barking, and stated that they will be living on the property and will hear the barking louder than any neighbors. He doesn't want to listen to barking either, and wants to be a good neighbor. Larsen felt that expectations regarding noise, hours of operation, activities that will take place, etc. need to be spelled out on the conditional use permit.

Kim Gruebling stated that concerns about barking dogs would go to the County, and they will take whatever action is deemed necessary including citation. If the Town received a number of complaints from the Sheriff, they could take action at that time.

Francis stated he would take new comments tonight.

Doug Sutter, lives on Stewart Road across from the property in question and was unable to attend last month's meeting. The George family have been good neighbors and he has respect for them, as well as empathy for them wanting to sell their property. Was never bothered by any noise from the George farm operation. Sutter has 30 years of experience in commercial construction, familiar with sound deadening issues and is sure there are ways to make the buildings in question sound proofed or sound deadened and noise concerns can be addressed. If sound attenuation measures are being installed, it would address his concerns. The open side of the building in question for housing the dogs faces his home directly, and currently is not set up to provide any sound deadening capabilities. Feels if the Town is going to monitor the situation and put requirements in the conditional use permit, he is ok with the request.

Soundproofing measures wouldn't have anything to do with building codes, and would therefore have to be addressed in the conditional use permit.

Valerie Bridges, Highway 14. Has reviewed the Town's zoning ordinance since the last meeting, and would like clarification regarding how the parcel can be zoned A1 without having 35 acres. Francis explained that the parcel was separated using a conditional use separation process, it was allowed to remain A1. Kennels are a conditional use in A2 and A3 zoning

districts as well. Bridges wanted it noted that the building housing the dogs is 273 yards from her property, and other kennels in question have far more acreage than this property.

Dan Whitmore stated he has known Scott Lindner more than 1 year and Lindner helped him out with training one of his dogs. Stated that Lindner will do what he states he will do, and if a dog is bothering the neighbors he will take care of it. He has high expectations.

Dick Pharo, lives just north of property and has been there 14 years. In the last 5 or 6 years there have been 2 fatal accidents at Holt and Hwy 14, as well as an accident when a milk truck was hit. The amount of traffic is increasing all the time on Highway 14. He has seen the school bus passed in no passing zone from his home; if school buses are being passed in front of his house what might happen with additional traffic from kennel.

Larsen wanted to discuss the conditions to put on the permit.

- Hours of operation:
 - Doggie daycare: M-F 6:00 a.m. – 6:00 p.m., Saturday 8:00 - noon
 - Training classes: M-F 6:00 p.m. - 8:30 pm, Saturday 8:00 a.m. - noon.
- Dog boarding, doggie daycare, dog training classes are allowable activities.
- Regarding waste management, permit holder will use disposal company provided containers with scent eliminators.
- No lighting will be installed other than security lighting.
- Inside recreation area and all areas housing dogs will be heavily insulated and baffled to control noise.
- Permit holder will comply with the Rock County barking dog ordinance at all times.
- A five foot chain link fence will be installed to control dogs.
- No dogs will be allowed outside prior to 8:00 a.m. and after 8:00 p.m., Sunday – Saturday.

Thomas noted that at last month's meeting someone provided a letter from a realtor regarding loss of property value.

Levin stated he has a relative breeding Labs and he has talked to him quite a bit about the issue; they have had issues but have worked them out with their neighbors. Also stated that his neighbors don't think that the kennel has lowered their property value.

Thomas noted that the times the dogs would be allowed outside in the morning was an issue, and Lindner stated at last month's meeting that he could keep dogs inside until 8 am to address neighbors concerns about dogs outside.

Lindner clarified that training classes would be held mainly inside but he would like the ability to hold them outside, weather permitting.

Motion to recommend to the Board approval of the 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, 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) with the conditions stated, made by Larsen/Levin.

Agreed by Larsen/Levin to amend motion to include the following conditions:

- the Clerk will be notified via email of any emergency situations arising which require admitting dogs outside of hours of operation
- up to 20 dogs may be boarded at any one time
- up to 20 daycare dogs may be housed at any one time
- permit will be reviewed one year from date of approval by the Town Board.

Roll call vote: Ed Levin – Yes; Alvin Francis – Abstain; Eric Larsen – Yes; Dave Pestor – Yes; Bill Thomas – Yes. Motion carried 4-0.

Farmland Preservation

Motion to approve draft map as presented by Rock County made by Larsen/Thomas.

Motion to adjourn made by Thomas/Larsen. Meeting adjourned at 9:16 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.