

The  
**AREA PLAN COMMISSION**  
of Tippecanoe County

**Ordinance Committee**  
**Notice of Public Hearing**

**Date: February 6, 2019**

**Time: 4:35 PM**

**Place: County Office Building**

**Tippecanoe Room**

**20 North Third Street**

**Lafayette, Indiana 47901**

**AGENDA**

**I. APPROVAL OF MINUTES FROM THE JANUARY 2ND MEETING**

Documents:

[ORD 01.02.2019.PDF](#)

**II. ZONING ORDINANCE VIOLATION CITATIONS:**

A discussion requested by Mike Wolf, Building Commissioner, regarding adding zoning violation citations and ticketing to the zoning ordinance - Additional information will be distributed at the meeting.

Documents:

[VIOLATIONS SUBJECT TO TICKETING - THIRD REVISION 12419.PDF](#)

**III. PROPOSED CHANGES TO THE UZO REGARDING WIND FARMS:**

A continuation of the discussion from the December Ordinance Committee meeting regarding amending our current UZO regulations on wind farms or WECS (wind energy conversion systems)

**IV. CITIZEN COMMENTS**

**V. ADJOURNMENT**

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY  
ORDINANCE COMMITTEE MEETING  
MINUTES OF PUBLIC MEETING**

DATE.....JANUARY 2, 2019  
 TIME.....4:45PM  
 PLACE.....COUNTY OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

Larry Leverenz  
 Jackson Bogan  
 Carl Griffin  
 Gary Schroeder  
 Tom Murtaugh

**MEMBERS ABSENT**

Greg Jones  
 Jerry Reynolds  
 Gerry Keen

**STAFF PRESENT**

Ryan O’Gara  
 Kathy Lind  
 Diana Trader  
 Zach Williams, Atty.

**OTHER ATTENDEES**

Bob Gross  
 R. Gregg Sutter  
 N. Charshe  
 Kay Miller  
 Steve Clevenger  
 Mike Devine  
 Bill Miller  
 Ken Koch

Chair Jackson Bogan called the meeting to order.

**I. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the November 7, 2018 Ordinance Committee meeting. Carl Griffin seconded and the motion passed by unanimous voice vote.

**II. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the December 5, 2018 Ordinance Committee meeting. Carl Griffin seconded and the motion passed by unanimous voice vote.

**III. PROPOSED CHANGES TO THE UNIFIED SUBDIVISION ORDINANCE REGARDING THE FURTHER DIVISION OF TEN ACRE TRACTS:** A discussion to make minor changes to the amendment that was continued from the November APC agenda to the January APC agenda – Kathy Lind.

Kathy Lind said that Unified Subdivision Ordinance Amendment #11 and Unified Zoning Ordinance #94, regarding the further division of 10-acre tracts were on the November Area Plan Commission agenda. Kathy

said at the November Ordinance Committee meeting there were 2 surveyors, Bob Gross of R.W. Gross & Associates, Inc. and Pat Cunningham of Vester & Associates, Inc., who spoke on the issue. She said they had a couple of good suggestions for tweaking the 2 amendments. She said what the board has in front of them now is the amended amendment. She said one change they talked about was the Farmstead definition. Kathy said originally the Farmstead had to have been in existence since before November 19, 1979. Bob Gross and Pat Cunningham suggested that was not fair to people who had a house built before 1979 but had torn it down to build a new house. Kathy said they have now changed the definition to state that for the purposes of this definition, the original Farmstead must have been must have been built prior to November 19, 1979. She said this change in the definition should correct this issue.

The 2<sup>nd</sup> suggestion they had was regarding the original proposal to make 20-acre tracts the smallest tracts for the A, AA, and AW zones. Bob Gross and Pat Cunningham suggested keeping the 10-acre tracts as the smallest tracts for the AW zones rather than 20-acre tracts. She said many times land in the AW zones is used for housing because it is not farmland. The staff felt that some of the land in the AW zones is farmland, so in attempting to protect that farmland they have proposed that if 50% of the land, based on the latest aerial photographs, is wooded then it can be a 10-acre tract.

Jackson Bogan asked for clarification about breaking a 10-acre tract out of a piece of land. Kathy said that a 10-acre tract would only be allowable in AW zones and only if that 10 acres is at least 50% wooded. Tom Murtaugh asked if the 10-acre tract could be laid out to be 50% wooded. Kathy said that was correct. She said what would not be allowable is for a 40-acre parent tract to be divided into 4 10-acre tracts unless at least 5 acres of each 10-acre tract was wooded.

Jackson Bogan asked if 4 parcelizations had taken place and there was a 10-acre tract left that was at least 50% wooded, could it be divided under staff's proposal. Kathy said no because right now 10-acre tracts are the smallest tracts that can be created without doing a minor subdivision or parcelization.

Carl Griffin said if the land was zoned A or AA then the minimum would be 20-acres tracts no matter what.

Kathy said that was correct because staff feels that would better protect farmland. She said the argument for the AW zones is that 10-acre tracts are too big for a house but too small to farm. She said 20-acre tracts makes more sense for farmland.

Tom Murtaugh asked if there is a minimum size for a parcelization.

Kathy said 2 acres is the minimum size for a parcelization. She said minor subdivided lots can be as small as 30,000 square feet, depending on the soil type for septic system purposes.

Bob Gross, R.W. Gross & Associates, 420 Columbia Street, Suite 100, Lafayette, IN 47901, said he and Pat Cunningham from Vester & Associates had talked about just leaving the 10 acres alone in all three zones A, AA, and AW. He said he did not think there were many people doing 10-acre tracts in AA Select Agriculture zones. He said he has not done any in quite a while. He thought that would do away with the confusing changes in staff's proposal (such as 50% wooded or you would have to go up to 20-acre tracts). He said the bigger issue is when there is an existing 10-acre tract with a house on it, could that be divided further.

Kathy said the proposal would allow that.

Ken Koch, 8701 S. 200 E., Lafayette, IN 47909, said he has talked to several farmers about this issue and he did not think many people are very concerned about this. He said what concerned him is that zoning ordinances dictate the price of land and what a property owner can do with his land. He said when he bought his farm in 1985 it was zoned FC Forestry Conservation and FP Flood Plain combined. He said his property taxes were \$1.00 an acre at the time. He said several years later he found out his farm had been rezoned without notification to him. He said it was rezoned to AW Agricultural Wooded and FP Flood Plain. He said he still had the ability to section up his land into 10-acre tracts and he has close to 100 acres. He said the 100 acres did not help pay for the farm and that he paid for the land himself. He said he is currently allowed to sell off a 10-acre tract if he wants to. He does not know of any sales of 20-acres of good, production farmland for residential use. He said he has sold real estate for the last 45 years and people contact him all the time about purchasing 10-acre tracts, so they can have a horse. He said that is hard to

find and that farmers generally do not allow prime farmland to be sold that way. He said it is fruitless today to look for 10-acres that a farmer will sell for residential use. Mr. Koch does not understand the reason for requiring 20-acre tracts as opposed to 10-acre tracts because people can't even find 10-acres today to build on. Mr. Koch said residential land used to be more expensive to buy than farmland, but in the past few years the price of farmland has outpaced the price of residential land. He said the price of the land will fluctuate over time but that if a farmer needs to sell off some land to hold his farm, staff's proposal will require him to sell 20 acres rather than only 10 acres. Mr. Koch does not think there is a market for 20-acre tracts because most people do not want more than 10 acres.

Zach Williams, attorney for the Area Plan Commission, told Mr. Koch that his comments should be limited to 5 minutes and asked him if there was a specific recommendation he wanted to make.

Ken Koch said he would like to keep the 10-acre tract as the minimum size in all 3 Agricultural zones A, AA, and AW. He said he deals with this every day and it has worked well for the past 20 years. He said he does not see any benefit to making 20-acres the minimum size for the A and AA zones.

Greg Sutter, 308 Main Street, Suite 1, Lafayette, IN 47901, said he has also been in the real estate business for a long time like Ken Koch. He said in the past he was able to sell all the 5-acre tracts that people wanted and then it went to 10-acres. He said he does not see the logic in making a 20-acre minimum size. He said he had not researched the issue and he does not understand all the ramifications of the proposed change. He hoped the proposal would not pass at this time so that he could do some research on it or talk to Area Plan Staff, so they could explain the proposal to him. He said he is not excited about going from a 10-acre minimum to a 20-acre minimum tract size.

Kathy Lind said there seemed to be confusion about what the staff is proposing. She said the FC Forestry Conservation district no longer exists. She said the FC zoning became AW Agricultural Wooded zoning and no property was rezoned, it is only a different designation. She said currently only 2 parcels are allowed from a parent tract and staff would like to increase that to 4 parcels from a parent tract. Kathy said currently if a parent tract had been parcelized 4 times, but the farmer wanted to separate a farmstead from the farm, he could not do so. This proposal would allow for the farmstead to be sold off on a 2-acre tract. The other change staff is asking for is the 20-acre change. She said currently the minimum lot size is 10-acres across the board. This proposal will leave the 10-acre minimum for all zones except the A and AA zones. Staff would like to protect the farmland in these zones. Kathy said with this proposal the farmer will be able to get 4 parcels from the parent tract rather than only 2 parcels. She said the other change this proposal calls for is that 10-acre tracts could be divided into 2 tracts. She said staff feels they are offering a wide change in favor of the farmers and the one concession they are asking for is the 20-acre minimum for the A and AA zones and some AW zones.

Tom Murtaugh said the intent is not to push residential lot sizes to 20-acres but to protect the A and AA zoned farmland from being developed for residential use. He said the AW Agricultural Wooded would be better suited for smaller, 10-acre residential lots.

Kathy Lind concurred.

Jackson Bogan said to clarify there are 2 broadening positions in the proposal. The first is going from 2 parcels to 4 parcels out of a 20-acre parent tract, and the second is being able to separate out a farmstead from the parent tract after 4 parcelizations had already occurred. Also, if someone had a 10-acre tract they would be able to benefit more than they currently could with that tract.

Kathy Lind agreed, and she said what started this proposal was that people who owned 10-acre tracts would often ask if they could divide those further. Currently they cannot divide them further, but with this proposal they would be able to do so.

Jackson Bogan asked what division rights are allowed for a 20-acre tract currently.

Kathy Lind said 20-acres zoned R1 could be divided into a minor subdivision.

Gary Schroeder asked if most of the larger tracts are zoned A or AA rather than R1.

Kathy Lind agreed that was the case and she said parcelizations are not allowed in the R1 zones.

Jackson Bogan asked if a 20-acre tract could be divided 2 more times.

Kathy Lind said with the new proposal, a 20-acre parent tract which had never been parcelized or subdivided could be divided into 4 parcels if it is zoned A, AA, or AW.

Tom Murtaugh said if there was a farmstead on the property it could be divided 5 times under the proposal.

Jackson Bogan said that currently it can only be divided into 2 parcels.

Kathy Lind said it could currently be divided into one 10-acre tract and two 5-acre tracts.

Gary Schroeder asked if there could be a 10-acre tract left after the 4 parcels with the new proposal. Gary said typically if you start with 20-acres you would make four 2 ½-acre tracts and have a 10-acre tract left. He said with this proposal there could not be a 10-acre tract left. He said a 20-acre tract would be divided into four 5-acre tracts. Gary said he is not sure the proposal is helping people.

Kathy Lind asked how many 20-acre tracts were left in the county?

Gary Schroeder replied there may be some but not many, so it is probably a moot point.

Kathy Lind said staff had talked about going forward with the proposal to see how it works out. She said staff could revisit the issue in the future to see whether it is working or not.

Gary Schroeder said he thinks the theory that 10-acre tracts are too small to farm is flawed. He said he owns 2 or 3 tracts that are less than 10-acres and he does farm them. He said it is not hard to find someone to farm small tracts. He said basically people will farm them because they don't want to mow them. Gary said by going from a 10-acre minimum tract size to a 20-acre minimum tract size, only half the number of 20-acre tracts being sold would result in losing the same amount of farmland. He said if you went to a 5-acre minimum tract size then 4 times as many tracts would need to be sold to result in losing the same amount of farmland.

Kathy Lind said she did not think that banks would issue mortgages on 20-acres for a house. She thinks 20-acres is really for farming.

Gary Schroeder said a federal bank will not do that, but a local bank will. He said Farm Credit will do it, and he said there are banks that specialize in doing that. He said for secondary market, banks are not interested in doing that.

Kathy Lind said she has people tell her frequently that banks will not issue a mortgage on 10-acres.

Tom Murtaugh said you can do 10-acres on secondary market if there are comps to support it.

Gary Schroeder said he is in favor of leaving it at a 10-acre minimum, and then revisiting the issue if a problem should arise down the road. He said farmers are not selling 10-acre tracts because they don't want to farm around it. He said he knows farmers who are buying back land they had sold off previously from the farmstead because they are tired of farming around it.

Kathy Lind asked if the farmers are not creating 10-acre tracts then why keep the minimum at 10-acres?

Gary Schroeder said it would give the farmers more options. He said he knows farmers who want to sell 10-acre tracts to their children to build a house on, but 20-acres is awfully big for that. He thinks that 5-acres would be better. He said you need to find the right balance because if you go too small then the roads become lined with 2-acre lots which causes problems.

Kathy Lind said the reason staff came up with parcelizations to begin with was so farmers could sell 2-acres to a son or daughter.

Gary Schroeder said that probably was established prior to 1979. He said typically when someone buys a farm today the division rights are already gone. He said that is the purpose of giving people with 10-acres the option to go to 5-acres because their all their division rights have been used.

Jackson Bogan said the point was made earlier that if the proposal for 20-acres was accepted, it could easily be changed later if problems arose. He asked if the 10-acre minimum was left in place, could it be changed easily also if problems arose? He said if the board pushes forward with 10-acres and if staff will keep a record of the problems caused by this, then staff can bring it back to the board to be fixed. He does not want to take someone's rights away and then give them back. He would rather leave the ordinance as it is now and then if problems arise the issue can be revisited.

Gary Schroeder agreed that government should not take away the property owners rights that are in place currently. He said somehow staff feels that by giving property owners more division rights than they currently have, then they need to take away some other rights. He thinks property owners should be given all the rights they can have so long as it does not create a problem. He said it should not be a give and take situation.

Carl Griffin asked Gary Schroeder if the people he has worked with will be fine with the rest of the amendment.

Gary Schroeder replied that the rest of the amendment is fine, and that staff had done a good job on it. He said citizens had come to ask for more division rights for the 10-acre tracts because all the current division rights had been used previously. He said this amendment solves that issue. He thinks the 20-acre minimum tract size is a problem.

Carl Griffin asked what would need to be changed specifically in section 2?

Kathy Lind said it would just go back to the way the ordinance is currently worded.

Ryan O'Gara asked what the justification was for the 20-acre minimum change.

Kathy Lind said it was meant to protect farmland.

Ryan O'Gara said it was meant to guard against residential densification. Ryan asked where the threshold lies between too much densification off the grid.

Tom Murtaugh asked if that was happening a lot. He asked if there were a lot of people who come in to do 10-acre farms to build a house.

Kathy Lind said anyone can record a deed for 10-acres and the Area Plan Staff does not see it. She said the staff only gets involved if it is smaller than 10-acres.

Tom Murtaugh said that if this change to 20-acre minimum tracts was made then that could not happen anymore.

Kathy said that would be correct in the 3 Agricultural zones.

Tom Murtaugh asked how the people in the Recorder's Office know that.

Kathy Lind said generally someone from the Recorder's Office will call to let her know that something less than 10-acres is being recorded. She said sometimes it goes through at the Recorder's Office, but it will be stopped when a building permit is applied for.

Gary Schroeder said that is probably true, he said if a surveyor was involved in the process, he would tell the buyers that it was not allowed. He said if somebody prepares their own deed it could happen.

Kathy Lind said that if the buyers use a surveyor from outside Tippecanoe County, who is not familiar with Tippecanoe County ordinances, that is another way a problem can arise.

Gary Schroeder moved to move the amendment forward as written except keeping the smallest parcel at 10-acres.

Jackson Bogan said that means removing paragraph A section 2.

Tom Murtaugh said that the revisions from section 2 and section 3 should be removed. He said section 2 and section 3 will remain as they currently read today. He asked if this would change anything that was done to help with the original problem.

Kathy said that was correct and the board will go forward with dividing 10-acre tracts. She said if farmers continue to create 10-acre tracts in the future, the date is going to be key. She said the 10-acre tract would have to have been created before June 1, 2018 in order to divide it in two.

Tom Murtaugh seconded the motion.

Carl Griffin asked about the June 1, 2018 date. He said the board is doing some protection of future farmland.

Kathy Lind said property owners would not be able to further divide their 10-acre tracts if they were created after June 1, 2018. She said that was about it for protecting farmland.

Carl Griffin said if the amendment is passed then the 10-acre tracts would have to have already been created by midyear 2018.

Kathy Lind concurred.

Carl Griffin said going forward someone could not divide a 20-acre tract into two 10-acre tracts.

Kathy Lind said that going forward a 20-acre tract could be divided into two 10-acre tracts. She said if there was 20-acre parent tract that had not been divided previously, it could be divided into 4 parcels or two 10-acre tracts.

Jackson Bogan asked how many of these tracts are left in the county.

Kathy Lind said there are a lot of 10-acre tracts that cannot be further divided currently.

Jackson Bogan said the items in section 1 take care of the 10-acre issue. He said the language already broadens it to allow 10-acres to be divided into two 5-acre tracts. This happens without the 10-acre or 20-acre minimum tract discussion for the A and AA zones.

Kathy Lind agreed.

Jackson Bogan said there is a motion and second to send this forward as 10-acres versus 20-acres and with the other amendments. He asked if there were any other motions.

Gary Schroeder said he would like one other clarification on the farmstead. He asked if the original house had been built prior to 1979 but had been torn down and rebuilt after 1979 would it still qualify for the division rights.

Kathy said that was the case if the original farmstead had been built before 1979.

Jackson Bogan asked for a voice vote to send the proposal forward. The board voted 4 ayes to 1 no to move it forward.

Zach Williams said that because there was a dissenting vote, he would like a vote by raising of hands

Jackson Bogan asked for the 4 aye voters to please raise their hand in favor of moving the proposal forward. He asked for those opposed to raise their hand against.

**Yes Votes**

Gary Schroeder  
Tom Murtaugh  
Jackson Bogan  
Larry Leverenz

**No Votes**

Carl Griffin

Kathy Lind said this is on the agenda for the January 16, 2019 Area Plan Commission meeting.

Gary Schroeder said he thinks the board is still protecting farmland. He said the county is not going to lose farmland because of this.

**IV. PROPOSED CHANGES TO THE USE TABLE REGARDING QUARRYING IN THE FLOOD PLAIN ZONE**

Zach Williams said at this point this is mostly informational. He said that he and Sallie Fahey still had more meetings in the mix about this due to the holidays. He said that in the packet there are questions about the individual uses that were discussed the last time. He said Kathy Lind had broken those out so that the board can look at them. Zach said at this time there is no formal recommendation from staff because they are still doing background research on it. Zach thought this may get tacked onto the February agenda depending on how much is on that agenda.

Jackson Bogan asked if anyone wanted to speak on behalf of the quarrying.

Kathy Lind said there were some overlapping vacation issues and because of that the research had not been completed. She said the permitted use table with the proposed changes that were discussed at the previous meeting is included in the packet. She said currently the table only has one line for SIC Group 14 and she had added seven additional entries. Kathy said according to the table the only one of these entries permitted by Special Exception in the Flood Plain is #144 Sand and Gravel. She pointed out that on the first line of the table for SIC Group 14, Mining and Quarrying of non-metallic minerals, except fuels, the S under the last column Flood Plain has a line through it. Kathy said that S would go away.

Jackson Bogan asked when this will be on the agenda again.

Kathy Lind said the February 6, 2019 Ordinance Committee meeting is going to discuss wind farms again. She asked if that would take the entire meeting.

Jackson Bogan said the wind farms discussion would take the entire February 6, 2019 Ordinance Committee meeting.

Kathy Lind asked if this should be continued until the March 6, 2019 Ordinance Committee meeting.

Jackson Bogan recommended this be placed on the March 6, 2019 Ordinance Committee agenda.

Bill Miller, 8143 State Road 25 N., Lafayette, IN 47905, said he agrees with what the table shows for sand and gravel. He said the Flood Plain has an environmental purpose. He said the Flood Plain is self-made and he does not think the board should mess with it.

Ken Koch, 8701 S. 200 E. Lafayette, IN 47909, said he does not take sides either way between the Flood Plain and the gravel mining. He said he does take sides as a real estate appraiser. He asked how he should handle appraisals of farms that have gravel, when it is not clear whether the gravel can be mined. He said he appraised a farm near Prophetstown State Park that had 90 feet of gravel, but he could not put any future

value on that gravel until it is made clear what is allowable in this county and what is not allowable. He said if the gravel cannot be valued, the local real estate appraisers need to know that.

Gary Schroeder said that nothing has changed with gravel, and it can be mined in the Flood Plain zone with a special exception. Gary asked if that was the case in every zone or just the Flood Plain.

Kathy Lind said it is just as the table shows.

Gary Schroeder said that the only thing the board is saying is they are eliminating mining everything except gravel in a Flood Plain. He said gravel can still be mined in a Flood Plain with a special exception.

Ken Koch said it is hard to put a value on that.

Gary Schroeder said he understands that.

Jackson Bogan asked if anyone else wished to speak on this.

Jackson Bogan said with that the board will move on to:

## V. ZONING ORDINANCE VIOLATION CITATIONS:

Kathy Lind asked everyone to follow along on the sheet marked Violations Subject to Ticketing & Fines (2<sup>nd</sup> Revision). She said she made the following changes to the Fee Schedule on the sheet dated October 31, 2018. Kathy Lind said these changes came out of a conversation she had with Mike Wolf, Tippecanoe County Building Commissioner. She said Mike Wolf would also speak on this shortly.

### Fee Schedule

#### Land use citations

- First contact is a knock on the door; if no response, a letter is sent to both the property's owner and the address of the site in question (if there is a renter living on site). This letter serves as notice of the violation and warns that they have a 7-day deadline to contact the Building Commissioner's Office or a citation will be issued.
- If no contact in 7 days, the 1<sup>st</sup> citation of \$200 is issued.
- If no contact or payment in 14 days (three weeks from initial contact), a 2<sup>nd</sup> citation of \$400 is issued.
- If no contact or payment in another 14 days (five weeks from initial contact), a 3<sup>rd</sup> citation of \$600 is issued and a letter is sent stating that legal action will now be taken. The Building Commissioner's Office would be done with the violation at this point and the APC attorney would take over.

She said further below the development standard citation would be the same except the fees would be slightly different.

#### Development standard citation

1 <sup>st</sup> citation	\$100
2 <sup>nd</sup> citation	\$200
3 <sup>rd</sup> citation	\$300

Mike Wolf said he wanted to clarify that these zoning violations are complaint driven and his department is not going out looking for violations. He said this is the way his department operates now, and it gives a person an opportunity to fix the violation within a reasonable time frame so there will be no citation. He said he is only requiring that there be some contact made with the Building Commissions Office within 7 days and a reasonable plan to fix the violation is established. He said the violations vary in size and that some of them can be resolved in an hour or a day where others can take up to 6 months to fix. He said he is not for writing a citation on the first visit because most people are not aware that there is an ordinance that involves a violation.

Tom Murtaugh said because of the difference in the fees between the land use violation and the developmental standard violation he wondered whether it was clear which type of violation people are being cited for.

Mike Wolf said he thought it was clear.

Zach Williams said one of the things the committee talked about was how other jurisdictions handle this problem. Zach said he had looked at Monroe County and they went out and listed each violation and fee to show people where they believed the violation fell. He said Monroe County also charged different fee amounts for different levels of violations. Zach said we have a list of actual zoning pinpoint citations. He said the final draft of this is going to be a deferral program. He said the final list will show each of the Developmental Standard violations and each of the Land Use violations. He said if a violation does not fall under one of those then it will follow the normal process. Zach said he does not want any discretion built into this.

Jackson Bogan said if someone does not respond within 5 weeks, they would be fined \$1,200.

Mike Wolf said that was correct and then it would go to the county attorney.

Jackson Bogan asked if the standards that are outlined in the Land Use citations were the same for the Developmental Standard citations, such as the first contact would be a knock on the door and so on.

Mike Wolf said he would like to keep the process the same so there will be no confusion or question about how the situations are handled. He said some of the Developmental Standard violations can be very easily corrected, which is why he wants to give people 7 days to correct the violation before they would be fined.

Gary Schroeder asked what the appeal process for the citations would be.

Mike Wolf said property owners have the option to go to the BZA (Board of Zoning Appeals) if they do not agree with the citation. He said they may still have to pay the fine if they cannot get into the BZA before the fine is due. He said they could possibly not pay the citation until the case is heard by the BZA and if the BZA chose not to honor the citation then they would not have to pay the fine at all.

Gary Schroeder asked if the citation was appealed to the BZA would the property owner be required to pay the \$500 filing fee to the BZA.

Mike Wolf said they could possibly pay the fine up front and save any further fines.

Gary Schroeder said he wanted to clarify, if someone files for a zoning variance with the BZA they are required to pay a \$500 filing fee. He asked if someone appeals an Administrative Officer's decision would they still have to pay the filing fee.

Ryan O'Gara said an appeal is an appeal.

Jackson Bogan asked if the fees would be stated specifically in the letter that would be sent to the property owner.

Mike Wolf said yes, the letter would state what the consequences would be.

Jackson Bogan asked if the 7-day period is 7 days from the date of the mailing of the letter.

Mike Wolf said that was correct. Mike said if the letter was going out of state it could be an issue but in most cases the letter would be mailed in-state and he did not think that would be an issue.

Jackson Bogan said the idea is to get the property owner to contact the Building Commission Office.

Mike Wolf said there are some people who simply will not answer the door when they knock just because they know what the issue is going to be. He said they need to establish a time frame for contact, so they can get a conversation going as to how to correct the violation.

Jackson Bogan asked about PO Boxes and about the letter getting to a renter as opposed to a property owner. He asked if the time frame for the first contact should be extended from 7 days to 10 days.

Carl Griffin asked how many of the letters are typically sent out in a month.

Mike Wolf said most of the violations are handled on the first visit. He said most people answer the door, the inspectors tell them what the violation is, and they work it out a solution together.

Carl Griffin asked if there would be some benefit to getting a signature or a delivery receipt.

Zach Williams said generally in the legal world most things are sent by certified mail, so they will have proof that:

- a) the letter was sent, and
- b) the letter was either received or refused.

Zach said that a lot of times people will refuse a certified letter but at least they have the date when the attempted delivery occurred. He said trying to get a signature is a good idea in theory but could be difficult to do in practice.

Carl Griffin said he thought it would be useful to send a certified letter so there would be proof of when the delivery was attempted even if it was refused. He also thought it would be good to give the property owner a couple of more days to respond.

Mike Wolf said that in the past he was not notified whether the letter had been refused for some time. He said he will get a receipt from the Post Office saying they have received the letter and they are moving it forward, but he thought it sometimes took a month or so before they were told the letter had been refused. He said that was the issue he had with sending certified letters.

Zach Williams said the cost of certified mail was the other issue. He said he has the same problem as an attorney. He said the only way he had to prove a letter had been sent was to send it by certified mail or another delivery system that required a signature. He said there are situations where he does not get the green card back from the post office.

Jackson Bogan asked if the property owner called on the 8th day rather than the 7<sup>th</sup> day would the fine would be automatic.

Mike Wolf said he would give a little leeway in that situation.

Jackson Bogan said if it is not a line in the sand, he is fine with 7 days. He said the past 2 weeks with people being gone over the holidays is a prime example of what he is talking about.

Mike Wolf said he needed to know where the funds will go and what they should be used for.

Gary Schroeder said they should go into the County General Fund. He does not want this to turn into a system that can be used to raise funds for specific projects.

Mike Wolf said he would like the funds to go into a legal fund that can be used for attorney fees if he needs take a violation that far.

Kathy Lind said Sallie Fahey's recommendation was to establish a fund for buying out properties in the Flood Plain.

Zach Williams said that may be the County Commissioners' decision to make. He said he would have to research that further.

Gary Schroeder said he know the cities of Lafayette and West Lafayette deal with this issue differently. He said in West Lafayette they leave a door hanger with a checklist. He said that way they know there is a higher likelihood the person has seen the notice. He said the mail can sometimes take 5 or 6 days to be delivered.

Mike Wolf said the inspectors will leave a note with their business card and a violation tag.

Gary Schroeder said that should be added in the language of the ordinance so that practice will be continued by the next Building Commissioner after Mike Wolf leaves the position. He also asked about the appeal process. He asked what kind of legal issues there were with charging someone a fine and then charging them again for the appeal.

Zach Williams agreed that should be studied further, and it raises some concerns. He said he is not aware of another situation where someone would have to pay a filing fee in order to appeal an ordinance citation. He said that just because he is not aware of it does not mean that it is prohibited, but it does seem out of the ordinary. He said it does need to be looked at further, especially if this will be treated as a deferral program from the normal process for violations. He said if the purpose of this is to get people to comply, then it almost defeats the purpose by double fining them.

Gary Schroeder said he did not think it sounded fair. He thought the filing fee should be waived.

Tom Murtaugh asked if the appeal could be heard by the Executive Committee to avoid the filing fee for the BZA Committee.

Zach Williams said if the Ordinance Violations statute was used, which is contained in the Area Plan world, it will probably force an appeal into the BZA. He said Monroe County had an Ordinance Violations Bureau which is a separate section of statutes. He said they used it for violations for all county departments such as their Sheriff Dept, Health Dept, etc. Zach said he thought this was brought up in Tippecanoe County back in 2002 and it did not pass. He said once you go down that path you would need a bureau that is staffed for the county.

Ryan O'Gara said that Monroe County does not have an Area Plan Commission. He asked if an APC was a different legal framework.

Zach Williams said it is, but they still took zoning violations and forced them into that Ordinance Violations Bureau. He said he did not think that was a good fit for Tippecanoe County because you would need to set up an entirely separate department just to hear these cases. He said that would be much more intense than what the board is trying to do here, which is to fix a very particular problem. Zach said he thinks the BZA is the correct committee to hear appeals for this, but he does think they need to look at the filing fee to appeal a diversion violation.

Mike Wolf said in all the zoning violations he has presented to people he has not had any come to the BZA. He said his department is very good at explaining the violations, and they can pull the violations out of the ordinance to show people.

Gary Schroeder said that Mike Wolf and his predecessors have all done a great job solving problems. He said his concern is with future Building Commissioners and how they will handle these types of situations. He said there were problems in the past with previous Building Commissioners. He told Mike Wolf he appreciated the way he approaches these issues.

Zach Williams asked Mike Wolf if this proposal is what he would like to see.

Mike Wolf concurred.

Zach Williams said that there would be a couple of questions from the minutes that need to be addressed such as can anything be done about the filing fee for appeals and questions about the mailing issue and the

door hanger. He said that way there would be 2 forms of notice that can be tracked, one from leaving a notice on the door and one from a mailer.

Mike Wolf said he did not have any objection to extending the 7-day period to 10 days. He said it would still be a faster process than what is currently being done.

Gary Schroeder said Mike Wolf just needs a process to deal with the people who ignore him.

Mike Wolf said that is correct. He said he does not have a problem with 90% of the people he deals with, he only has a problem with 10% of them.

Ryan O'Gara asked if the state has any appeal period for violation notices. He said many states do have a 30-day period before any fines would kick in.

Zach said most of the time the state statute is going to say municipalities can write a violation for any number of things if it is not pre-empted by state law. He said for example we would not be able to write a violation for speeding because there is already a state law. He said that leaves it up to the discretion of the municipalities to decide how they want to handle things. He said that was what he was referring to when he talked about Monroe County having an Ordinance Violations Bureau. He said it was like West Lafayette having its own Traffic Court to hear noise violations and things like that. He said Tippecanoe County did not want to get into that type of situation because they would need to hire a judge to hear these cases separately. He said as far as a timing issue is concerned, he thinks people will have whatever appeal rights they have under the BZA and those cannot be changed. He said he thought the timing could be tweaked a little bit because this is supposed to be a short process. He said we need to come up with a process as far as time to appeal and time to pay. He thought that could be obtained from the BZA laws and there needs to be a deadline on it.

Ryan O'Gara said that the locality has the discretion to invent an appeal period. He said in Virginia there was a state-wide 30-day appeal period. He said if a person was issued a violation notice he had 30 days to do something with it. After 30 days the appeal right was gone, and the fines would then kick in. He said the zoning administrator kept track of the fines, but he did not issue any fines until the 30 days had past. He said if the person had submitted their BZA appeal in that time frame, then the fines were suspended until the BZA proceedings had finished. He said if the case was lost then the person would have to pay the fines and comply, but at least they got their day in court. He said in Indiana there is no 30-day mandate.

Zach Williams said on the front part he thinks we have discretion. He said on the 2<sup>nd</sup> part, if someone goes to the BZA and says they disagree with the program, then there probably is state law that would control that. He said there would be a short appeal deadline he thought was 30 days, but it may be shorter than that. He said on the front end when it comes to issuing a citation and how to handle that it would be up to the county to decide.

Tom Murtaugh said Jackson Bogan had to leave the meeting due to a family matter. He asked Zach Williams if he was to run the meeting in Jackson Bogan's absence.

Zach Williams agreed since Tom Murtaugh is the President. Zach said he just needs clarification on who will be putting all of this together.

Kathy Lind asked if this should be continued to the March 6, 2019 Ordinance Committee meeting.

Tom Murtaugh said he hated to continue this until March. He said it could be a very short conversation.

Zach Williams suggested putting it on the agenda for the February 6, 2019 Ordinance Committee meeting ahead of the wind turbines. He said another reason to put it on the February agenda is that it still needs to be heard by the Area Plan Commission. He said if it appears that there will be further discussion on this matter then it can be tabled.

Carl Griffin said that the 10-acre tracts issue will go to the Area Plan Commission in January.

**VI. CITIZEN COMMENTS:**

None

**VI. ADJOURNMENT:**

Gary Schroder moved to adjourn the meeting.

The meeting adjourned at 5:56 p.m.

Respectfully submitted,

*Diana E. Trader*

Diana Trader  
Acting Recording Secretary

Reviewed by,

*Sallie Dell Fahey*

Sallie Dell Fahey  
Executive Director

## **Violations Subject to Ticketing & Fines**

Revised Draft 10-31-18

Second Revised Draft 1-2-19

Third Revised Draft 1-24-19

### **Land Use Violations (no change from 10-31-18)**

- Junk yards
- Child Care Home
- Child Care Center
- Home Businesses (not legal Home Occupations) such as but not limited to:
  - Lawn care
  - Vehicle repair
  - Building contractor
  - Small engine repair
- Billboard/outdoor advertising sign
- Transient guest house
- Agricultural rental hall
- Boarding kennel
- Breeding kennel
- Construction/demolition disposal site
- Buildings in FP zones
- Amusement and recreation (outdoor) SIC 7999

### **Development Standard Violations (no change from 10-31-18)**

- Electronic signs/changeable copy signs changing more frequently than once per minute
- On-premise signage
- Fill in the floodplain
- Signs in public right-of-way
- Home occupation limitations
- Clear vision triangle
- Fences
- Setbacks for porches, decks and accessory buildings
- Event oriented signs

### **Fee Schedule**

#### Land use citations

- First contact is a knock on the door; if no response, a citation notification is left at the door and a certified letter is mailed to the address of the site in question. (If the property is being rented, a second certified letter is mailed to the property's owner). This letter serves as notice of the violation and warns that they have a 15-day deadline to contact the Administrative Officer's Office and agree to a plan of action or a citation will be issued. (15 days is the same number of days state statute gives a property owner to file an appeal with the Board of Zoning Appeals.) Making the deadline 15 days gives the "violator" three choices:
  1. Agree with the Administrative Officer, contact the A.O. and begin to fix the situation;
  2. Disagree with the A.O. and file an appeal of the Administrative Officer's decision with the ABZA;
  3. Do nothing and be fined.
- If no contact and no appeal is filed in 15 days, the 1<sup>st</sup> citation of \$250 is issued.
- If no contact is made in another 15 days (30 days from the sending of the first letter), a 2<sup>nd</sup> citation of \$500 is issued.

- If no contact is made in another 15 days (a month and a half from the first letter), a 3<sup>rd</sup> citation of \$750 is issued and a letter is sent stating that legal action will now be taken. The Building Commissioner's Office would be done with the violation at this point and the APC attorney would take over.

Development standard violations would be handled in the same way except the proposed citation amounts would be less:

1 <sup>st</sup> citation	\$100
2 <sup>nd</sup> citation	\$200
3 <sup>rd</sup> citation	\$300