

The
AREA PLAN COMMISSION
of Tippecanoe County

Ordinance Committee
Notice of Public Hearing

Date: April 4, 2018

Time: 4:35 PM

Place: County Office Building

Tippecanoe Room

20 North Third Street

Lafayette, Indiana 47901

AGENDA

I. APPROVAL OF MINUTES FROM THE MARCH 7TH MEETING

Documents:

[ORD 03.07.2018.PDF](#)

II. PROHIBITING MINING IN THE FLOOD PLAIN ZONE:

A quick update as to where this proposal stands - Sallie Fahey

III. PREVIEW OF NEXT MONTH'S MEETING:

The May Ordinance Committee meeting will be a joint meeting with the Bylaws Committee to discuss changing the procedure for letters to be read into the record at APC and BZA meetings - Zach Williams

IV. CITIZEN COMMENTS

V. ADJOURNMENT

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

DATE.....MARCH 7, 2018
 TIME.....4:45PM
 PLACE.....COUNTY OFFICE BLDG.
 20 N. 3RD STREET
 LAFAYETTE, IN 47901

MEMBERS PRESENT
 Larry Leverenz
 Jackson Bogan
 Gary Schroeder
 Tom Murtaugh
 Carl Griffin

MEMBERS ABSENT
 Greg Jones
 Jerry Reynolds
 Gerry Keen

STAFF PRESENT
 Sallie Fahey
 Ryan O’Gara
 Kathy Lind
 Rabita Foley
 Eric Burns, Atty.

OTHER APC MEMBERS PRESENT

OTHER ATTENDEES
 Steve Clevenger
 Nate Hoffman
 Teresa Maxwell
 Chris Shelmon
 Betsy Blair
 Phil Maxwell
 Jim Pairitz
 Julie Peretin
 Chad Spitznagle
 Steve Schreckengast
 Alan Hoffman

Chair Jackson Bogan called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the February 7, 2018 Ordinance Committee meeting. Larry Leverenz seconded and the motion passed by unanimous voice vote.

II. BUFFERYARD STANDARDS:

A proposed amendment based on previous discussion on changes to the *UZO* regarding bufferyards and required screening for loading berths

Rabita Foley said changes to the bufferyard section of the ordinance were discussed by this Committee for the last few months. Staff was asked to conduct additional research and to pursue input from the Administrative Officers. Staff received permission from the Ordinance Committee, Administrative Officers, and stakeholders to go forward with the revised amendment included in the staff report. She then referred to the proposed amendment, including all the Committee’s recommended changes distributed in the packet and

asked if anyone has any questions. She then asked the Committee to recommend approval of the amendment to the full Area Plan Commission.

Tom Murtaugh said last month the Committee asked staff to take the proposed amendment to the Administrative Officers. He asked if the AOs were okay with the changes made at the February Ordinance Committee meeting.

Rabita Foley said staff took the proposed ordinance back to the AOs at least three times and the proposal was fully vetted.

Gary Schroeder moved to recommend approval of the **BUFFERYARD STANDARDS UZO AMENDMENT** to the Area Plan Commission. Larry Leverenz seconded and the motion was approved by unanimous voice vote.

III. PROHIBITING MINING IN THE FLOOD PLAIN ZONE

Continued discussion regarding an amendment to the *UZO's* use table that would prohibit mining within the FP zone

Kathy Lind said this topic was briefly discussed at the February Ordinance Committee meeting and no decision was reached. The issue is staff wants to prohibit mining within the Flood Plain zone. The subject came out of the Rogers Group Special Exception staff report, written in October 2017. With mining in the FP, there is a fear for wells in the vicinity of the mining operation and a concern about the stockpiles within the FP. The Ordinance prohibits stockpiles in the FP but the ordinance is not as explicit as it should be.

Larry Leverenz asked why wells are more at risk when they are in the Flood Plain zone than they are anywhere else.

Kathy Lind believes that is because FP zones are low in elevation to begin with and the groundwater is likely higher in those locations.

Sallie Fahey thinks the issue has to do with dewatering. When mining occurs in the FP, the area from which extraction occurs fills up with water. Mining cannot be done underwater so the area is dewatered (process of drawing the water down). The mining company cannot just stop at the area they pulled water out of but rather pulls water out from the entire aquifer. There is a potential of pulling water out of individual neighboring wells at the same time.

Larry Leverenz thinks that is no different when a mining operation is not in the FP because most holes fill up with water. He thinks we need to make this argument on solid ground if we are going to argue the point.

Sallie Fahey concurred but for her it is more that just wells being drawn down. She has concerns over habitats for species, archaeological sites that we know were occupied for thousands of years before someone decided there was mineral to extract, and Flood Plain operation during times of flooding. She thinks there are many issues with mining in the FP that do not necessarily happen in non FP areas. She added that she thinks we have to consider mining as an economic activity in our county but just not everywhere.

Tom Murtaugh asked if staff has taken a look at our existing mining operations.

Kathy Lind said there are currently three mining operations. One is in Prophetstown State Park, another is at CR 510 South and 18th Street (Purdy), and the last is a farmer living on CR 800 South who has an informal mining operation where he sells gravel from an area on his farm as people need it.

Sallie Fahey pointed out that the farmer's operation is not in the FP.

Kathy Lind said the Purdy operation has some FP from the Wea Creek on the property in the north that was included in the legal description for the special exception but the site plan for the special exception does not

show mining in the FP area. Staff does not think the FP area can be mined because the site plan does not show mining in that area.

Sallie Fahey said she and Kathy Lind talked about the active mine within Prophetstown State Park. They believe DNR owns the land but the mining rights remained with Vulcan's successor. The BZA granted approval to mine the site and there has been one or two expansions granted. One of the expansions was because DNR wanted a larger lake as an end result. There is an older pit on the other side of Swisher Road and on the southwest side of I-65 and research indicates that it was not approved because the site was zoned I3. You could mine by-right in an I3 zone under the old, pre-1998 ordinance. Staff checked the aerial photos between 2012 and 2016 and there is absolutely no change. She has been to the park several times and does not believe this is an active mine. She is not sure the mining operation can continue in an I3 zone even if the use has not been abandoned because they do not have approval and the current ordinance does not permit that without a special exception. The area that was mined is now part of the Flood Plain on the Flood Insurance Rate Maps however there is a non-Flood Plain barrier between the Wabash River FP and the Flood Plain created by the mining operation. The Purdy site is the only active mine with FP in the legal but Purdy never got approval to mine the Flood Plain according to the site plan. She does not think the current amendment will affect any current operations.

Gary Schroeder asked if there is a difference between the stone quarry, which is very deep, and the shallower Purdy gravel operation. He thinks depth is one of the issues because this amendment would prevent Purdy from coming back to expand his special exception if the current pit is exhausted.

Sallie Fahey said there is no distinction between a quarry mining operation and a gravel mining operation according to the definition in the SIC. She thinks earlier there was some legal concern about separating quarrying from mining but she is not sure if that came from Jay Seeger, or Zach Williams, or both.

Ryan O'Gara said he was part of that conversation and staff was counseled by Zach Williams not to show a bias toward a specific mining use. We should not be hand-picking which mining operations are allowed and which ones are not allowed.

Gary Schroeder thinks we should look at mining operations according to depth. He thinks a legitimate operation should be allowed to expand but not allow them to go very deep.

Jackson Bogan thinks Gary Schroeder is suggesting we prohibit mining by depth and not by type.

Gary Schroeder said he wonders if we can allow operating gravel pits to expand into the Flood Plain.

Sallie Fahey said sand and gravel is alluvial because it came from the deposit created by water. She suspects some geo-technical work is done to determine the depth once a person decides they have a site worthy of sand and gravel as opposed to limestone. She is not sure we can pick a depth because she believes each deposit is a bit different.

Alan Hoffman, 4740 Masons Ridge, Lafayette, IN 47909, said he has lived in Tippecanoe County for 11 years and is an advisor on the Board for the Americus Area Community Coalition. He thinks mining in the Flood Plain should be prohibited because flood plain land is prime farm land. He then presented a slide of the Rogers Group Americus site with the prime farm land shaded in green with almost all of it in the Flood Plain. An ordinance prohibiting mining in the Flood Plain will preserve this land and similar land along several rivers in the county. The next slide shows all the FP in the county that will be protected if this amendment is approved. Waste is an undesirable by-product of mining. The Rogers Group proposed waste pile (island) would have been in direct violation of the ordinance during a flood occurrence. The Americus residents were concerned about their water sources and he displayed a map prepared by a hydrologist that shows the draw-down rates of the Delphi Quarry and the soil conditions of the Americus area. The DNR mandated that a slurry wall would need to be built around the pit in order to mine in the Flood Plain in Americus. The projected three million gallons and up of pumped water per day can change the flow of the river as well as the silt buildup. The Americus Coalition presented factual evidence about the air and dust concerns from mining. Dust is associated with farming but mining runs for eight or nine months a year. The asphalt plants associated with a quarry can do a lot of damage to adjacent properties. The proposed ordinance will protect

future generations from having to fight a multi-billion-dollar corporation with deep political and financial pockets forever.

Nate Hoffman, 7701 Rolling Hill Drive, Lafayette, IN 47905, said he serves on the Washington Township Advisory Board and is Vice-President of the Americus Area Community Coalition. He said he will try to explain the politics behind the proposed amendment. Our local politicians spoke against the Rogers Group petition for a special exception for a quarry mining operation and the Rodgers request was denied. The desire to create an open-pit industrial mine would adversely affect his neighbors. The Rogers Group did not appeal the decision and many hoped it was over. A bill (HB 1289) that would have nullified our local government ruling received its first reading in the Statehouse in January and three weeks later passed the House by a vote of 63 to 27. The very next day the bill moved into the Senate and the driving force behind the bill is Representative Jeff Ellington, District 62. The proposed bill defines development of natural resources as extraction of mineral resources. A portion of the bill attempts to redefine what qualifies as an urban zone by increasing "8 residences in a quarter-mile square" to "20 residences in a quarter-mile square". Indiana Code states "this chapter does not authorize an ordinance or action of a plan commission that would prevent outside of urban areas the complete use and alienation of any mineral resources". The most disturbing portion of the bill is that industrial mining operations of this nature would not be reviewed by any Area Plan Commission or any Board of Zoning Appeals anywhere in the State of Indiana with regard to Flood Plain. He is not sure how the House feels about Flood Plains because they are specifically mentioned in the bill or if the State Representatives really did not know what they were voting on. HB 1289 was killed but Jeff Ellington managed to have the exact same verbiage tacked on to SB 386 as an amendment to further the special interest of mining companies rather than support the rights of Indiana citizens. SB 386 was also killed due to Tippecanoe County's hard-working elected officials.

Teresa Maxwell, 10357 West US 421, Delphi, IN 46923, said she farms in both Carroll and Tippecanoe Counties, is on the Advisory Board for The Americus Area Community Coalition, and serves on the Carroll County BZA. Today she is speaking as a member of the Deer Creek Levee Association. The Association is directly across the Wabash River from the proposed Rogers Group quarry site. The Levee Association was formed over 125 years ago and is responsible for managing the pumping operation and maintaining the integrity of the levee. The last levee breach was in 2013 and resulted in 1800 acres that are protected by the levee being flooded. The Association is concerned about blasting because it causes seismic disturbances in adjoining properties and the levee is susceptible to damage from such activities. Silt build-up is another concern and a mining operation will be pumping 3,000,000 gallons of water into the river, 24 hours a day, 365 days per year and there is no way to tell what kind of damage that will do to the river bottom. Any obstruction in a flooded area can inhibit water from flowing south and that puts additional pressure on the levee. Flood Plains filter pollutants out of water, create a biologically diverse habitat, act as a recharging area for ground water during dry periods, and create fertile soil for farmers. The organic material deposited during flooding creates fertile soil. She asked the Committee to protect Tippecanoe County's Flood Plain from the mining industry.

Tom Murtaugh asked if there are any other Indiana counties who have similar ordinances.

Sallie Fahey relied that she does not know.

Kathy Lind pointed out that there are counties in Indiana that do not have zoning as well as counties that have zoning but do not have a Flood Plain zoning district like ours. Some counties have zoning as well as Flood Plain zoning districts but the Flood Plains are treated differently than we treat ours. She went on to say Brown County distinguishes between the floodway and floodway fringe. Brown County does not allow mining in the floodway but they do allow it in the floodway fringe. Fulton County has an "intensive use" zoning district so in order to mine, you first have to rezone to the intensive use district and then get a special exception to mine. We do not allow the Flood Plain to be rezoned and she is not sure if Fulton County does. Most counties we looked at require a special exception to mine in the FP.

Tom Murtaugh does not think taking action on this amendment will jeopardize our participation in the National Flood Insurance Program because he thinks we can be more restrictive.

Sallie Fahey concurred.

Gary Schroeder asked what she meant when she said we do not distinguish between Floodway and Floodway Fringe.

Kathy Lind replied that our Flood Plain has both Floodway, where the water flows, and Floodway Fringe for flood backwater. We allow mines in both.

Sallie Fahey said we do make some distinctions in the *UZO* regarding what you can do in a Floodway and what you can do in a Floodway Fringe. The two areas together are the Regulatory Flood Plain. We do look at the difference but we deal with it as one zone because we and the DNR have joint authority over the Floodway and DNR leaves it to locals to regulate the Floodway Fringe. The two areas together create the Regulatory Flood Plain (100-year flood).

Jackson Bogan asked if we are speaking about regulating mining in both Floodway and Floodway Fringe.

Tom Murtaugh said neither Representative Ellington's bill nor this amendment incorporates anything about grandfathering meaning, the State bill would override any action taken locally.

Eric Burns said that is correct unless a grandfathering clause was specifically written in the bill. Politically we would have a great advantage by having something passed but legally may have no advantage unless grandfathering is written into the bill.

Eric Burns said APC counsel Zach Williams asked him to recommend this subject be tabled. He agrees with that recommendation because this is an issue that may attract attention and not all the attention will be positive whatever way APC votes. It is important that the Committee is well aware of all facts at all levels before taking action. There always has to be a rational factual basis for everything APC does. Right now Tippecanoe County has the BZA and that is an advantage because the BZA makes decisions in a timely manner. There is no question a factual basis can be developed that will give APC the ability legally to do a blanket ban but he suggested careful consideration while moving through the processes.

Chris Shelmon, 720 South 12th Street, Lafayette, IN 47904, said although he has appeared before the Committee professionally, he is speaking in a personal capacity today. It is apparent to him that this discussion is not really about Flood Plain protection and is really about banning mining. Right now the only thing affecting the Flood Plain is the levee that was built on the other side of the Wabash River. He pointed out there are activities in Flood Plains throughout the county. Every single green on the old city golf course is above the Flood Plain and they were designed to protect the Flood Plain. At some time we will want to have a new art museum in the Flood Plain. All projects and activities in the Flood Plain can only occur after the DNR, IDEM, and Army Corps of Engineers approve them. Those entities have the experts and engineers to analyze and determine the impact. It is not about fear of the unknown. He wants us to be honest by saying we want to ban mining and not Flood Plain safety.

Sallie Fahey said for her, this issue is about protecting the Flood Plains and added that there will not be an art museum in the Flood Plain. That is not permitted now and it will not be permitted in the future. She thinks Eric Burns and Zach Williams have given the Committee good advice and she supports tabling this issue. She then asked the Committee to give staff and legal counsel some direction to provide the Committee with a factual basis to write into the Flood Plain section of the ordinance at the next Ordinance Committee meeting.

Eric Burns suggested making findings as an organization stating the facts as to why we are taking these steps.

Tom Murtaugh said Doug Masson, Tippecanoe County Attorney, asked that this issue be tabled so communication between Doug Masson and Zach Williams can go forward.

Sallie Fahey thinks staff working together with the county and APC legal counsels to create a factual basis is a good thing.

Carl Griffin moved to table a proposed amendment **PROHIBITING MINING IN THE FLOOD PLAIN and FOR STAFF, COUNTY COUNSEL, AND APC COUNSEL TO DEVELOP AN ACCEPTABLE FACTUAL BASIS**

TO MOVE FORWARD WITH THE AMENDMENT. Larry Leverenz seconded and the motion was approved by unanimous voice vote.

IV. US 231 CORRIDOR PLAN

New discussion regarding the land use plan for the US 231 Corridor

Ryan O’Gara displayed the proposed Plan and said we started developing the plan last year and the steering committee, made up of key property owners in the area, met many times. The area is unique because two-thirds of the property is owned by either Purdue or Purdue Research Foundation. The goal is to create a sensible land use plan for the area because it is an area of huge future growth in West Lafayette. A public meeting was held at the beginning of February and the public comment period began. The draft Plan will be updated to reflect the public comments and we should be ready to present to the Area Plan Commission for adoption in April. The Plan starts with a brief history of the area and a list of the steering committee members and who each one represents. The profile section lists existing conditions like sidewalks and trails and future transportation improvements. He then asked if the Cherry Lane project will break ground this year.

Sallie Fahey said the portion of the project West Lafayette can afford to do will start next year but we will have to wait until we have Federal funds to do the rest.

Ryan O’Gara went on to say the West Lafayette and American Suburban sewer service areas will be delineated on the utility and sewer infrastructure map. The suburban context goal is a fairly diverse collection of residential and non-residential uses as well as university-oriented uses toward the airport. Implementation strategies are shown and direct work items were assigned to specific groups to list terms and priorities. A general rezone of the corridor is the next step after the Land Use Plan is adopted. We will try to include some unique zoning for PRF’s Innovation District. He then displayed the Future Land Use Map and tied the land use categories to specific zoning districts. The northern part of the corridor is a regional commercial node (GB) with more commercial activity at the Cumberland & US 231 intersection.

Carl Griffin thinks McCormick, north of Cherry Lane, will no longer connect with Lindberg.

Sallie Fahey thinks the connection will be north of Lindberg. She said staff will check on that. She added that she thought we talked about the Methodist church not being in the Innovation District because it is not owned by PRF.

Ryan O’Gara agrees that that is true but no final decision has been made on that site yet. He said we are talking about a long term land use plan.

Sallie Fahey thinks it will be a church for a long time and thinks it should be shown as a quasi-public district.

Steve Schreckengast, 3315 Shrewsbury Drive, West Lafayette IN 47906, said he is one of the major property owners at the Cumberland/US 231 intersection and his family owns about 97% of the frontage on Cumberland between US 231 and west to Klondike and 100% of the frontage on the south side of Cumberland. He has a vested interest in the Plan and he met with the West Lafayette Mayor and Director of Development to go over the pictures and plans. He has concerns about the vision, especially at the northwest corner north of Cumberland. The Plan calls for an upscale luxury lifestyle shopping center like Clay Terrace where shops and big buildings are connected by a couple of anchors. He questions the viability of that kind of center in this location with our income base and demographics. He would like to see some flexibility in the plan with regard to the 66 acres on the northwest corner. The two pieces of property have separate owners and the only way that area can be developed in a proper way is if he and the other owner can get together to accomplish that. His property with frontage on Cumberland Avenue is zoned R3W and he would like to keep that zoning until he can put together a deal to make that ground available. The Plan refers to the area as a “gateway” but he needs a gate to get in the gateway. He would like to have some input on the big plans that are planned because he does see a problem with the luxury lifestyle center because he will

have to spend \$50,000,000 upfront before opening any shops. He has commented before that looking at the design of the Anson development at Zionsville I-65 exit would be more appropriate because there are hotels, a self-storage facility, and a medical facility. He reminded the Committee that St. Elizabeth will be building a facility on 28 acres on the northeast side of the intersection. Anson has a Meijer and a lot of very attractive small shopping centers. He would like to see some evidence from a major commercial developer that a Clay Terrace type project would be appropriate or feasible at this location. He asked about the next step in the process.

Ryan O’Gara said that after meeting with Steve Schreckengast he plans to make a map change that will address his concerns. The *Comprehensive Plan* already favors multi-family around commercial nodes in suburban environments so he understands Steve Schreckengast’s concerns but he does not want to take away from the node with the greatest visibility. He agrees the triangular piece we are talking about has poor visibility from US 231 and there is multi-family housing just to the west. He reminded the Committee that the Land Use Plan is very long-term and right now it is a policy statement that can only materialize if we follow it up with some changes to the code and the ordinance and he is not sure West Lafayette wants to pursue it. Currently the site has development rights because it is sewered and zoned GB. Staff feels this is a tremendous opportunity for the city to create a unique location and agreed that there will have to be more homes before any commercial activity starts. When coming up with a plan that is 30-years out you have to overlook some of the immediate concerns and lay out bigger dreams for commercial development. He included language in the Plan that opened the possibility of creating new zoning tools when the time is right. No good ideas should be disregarded at this level of policy.

Jackson Bogan asked if the Committee is making tweaks to the Plan.

Sallie Fahey said the Ordinance Committee does not act on Land Use Plan proposals. This presentation was intended to be informational.

Ryan O’Gara said he would be happy to hear comments from the Committee after the meeting. Once the proposal is finalized he will post the Plan on the APC Website and inform the full APC and steering committee members so they can view the proposal.

Tom Murtaugh said he is not sure what staff is planning to present to the Ordinance Committee but he would like the Committee to talk about reading letters into the record at public hearings.

Sallie Fahey said changing that policy would be a By-law amendment. She went on to say she and Kathy Lind have talked about a couple of By-law amendments. She and Kathy Lind will work with Zach Williams before bringing any By-law amendments to the By-law Committee.

Rabita Foley asked if we can look at changing the BZA By-laws at the same time.

Sallie Fahey said the BZA has separate By-laws and we should deal with APC first and then move on to BZA.

V. CITIZEN COMMENTS

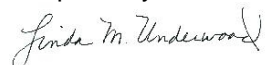
None

VI. ADJOURNMENT:

Gary Schroeder moved to adjourn the meeting. Carl Griffin seconded.

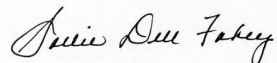
The meeting adjourned at 5:45p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director