

The
AREA PLAN COMMISSION
of Tippecanoe County

Ordinance Committee
Notice of Public Hearing

Date: November 7, 2018

Time: 4:35PM

Place: Tippecanoe County Office Building

Tippecanoe Room

20 North Third Street

Lafayette, Indiana 47901

AGENDA

I. APPROVAL OF MINUTES FROM THE OCTOBER 3RD MEETING

Documents:

[ORD 10.03.2018.PDF](#)

II. PROPOSED CHANGES TO THE USE TABLE REGARDING QUARRYING IN THE FLOOD PLAIN ZONE:

A discussion to restrict certain uses from the Flood Plain zoning district -
Sallie Fahey & Zach Williams

Documents:

[MINING IN FP PROPOSED AMEND.PDF](#)

[MINING IN FP PROPOSED TEXT AMEND.PDF](#)

III. ZONING ORDINANCE VIOLATION CITATIONS:

A discussion requested by Mike Wolf, Building Commissioner regarding
adding zoning violation citations and ticketing to the zoning ordinance -
Sallie Fahey & Zach Williams

Documents:

[VIOLATIONS SUBJECT TO TICKETING - REVISED DRAFT 10-31-18.PDF](#)

IV. CITIZEN COMMENTS

V. ADJOURNMENT

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

DATE.....OCTOBER 3, 2018
 TIME.....4:55PM
 PLACE.....COUNTY OFFICE BLDG.
 20 N. 3RD STREET
 LAFAYETTE, IN 47901

MEMBERS PRESENT

Larry Leverenz
 Jackson Bogan
 Carl Griffin
 Greg Jones
 Gerry Keen
 Gary Schroeder
 Tom Murtaugh

MEMBERS ABSENT

Jerry Reynolds

STAFF PRESENT

Sallie Fahey
 Ryan O’Gara
 Kathy Lind
 Don Lamb
 Zach Williams, Atty.

OTHER ATTENDEES

Steve Clevenger
 Shari Van Hook
 Gary Bennett
 Jim Pairitz
 Vickey Hawk
 Mark Russell
 Kent Evans
 Cayla Chitwood
 Gary Stair
 Peg Barton
 David Loser
 Brenda Lykins
 Kevin McDougle
 Ralph Johnson
 Ryan Gilbert

Jim Coplea
 Norm Bennett
 Tim Strueh
 Kay Pairitz
 Doug Milsaps
 Lori Russell
 Gabriel Eberhardt
 Adam Arnold
 Betsy Blair
 Faye Cole
 Rose Loser
 Brandon Lykins
 Katya Samoteskal
 Mark Kirby
 Dawn Hays

Kitty Coplea
 Jeanette Bennett
 Julie Peretin
 Steve Hawk
 Bob Osborne
 Don Thelen
 Chuck Hardesty
 Grace Craig
 Susan Whaley
 Karen Loser
 Star Warner
 Jeremy Chaffee
 Nick Edwards
 Trudy Baumgartner

Chair Jackson Bogan called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the September 5, 2018 Executive Committee public hearing with a correction. Greg Jones seconded.

Carl Griffin said under agenda Item II, he, not Greg Jones, seconded the motion at the top of page four of the minutes.

The minutes, as amended, were approved by unanimous voice vote.

II. PROPOSED CHANGES TO THE UNIFIED SUBDIVISION ORDINANCE REGARDING THE FURTHER DIVISION OF TEN ACRE TRACTS:

A discussion requested by a citizen at a previous meeting; staff has attached a proposed amendment to the Unified Subdivision Ordinance

Kathy Lind said a citizen requested the Committee change the subdivision regulations that prohibit him from further dividing his 10-acre tract and staff has also heard from others who are in the same or slightly different situations. The existing rules and three proposals made by the two APC senior planners were presented and discussed at the September Ordinance Committee meeting but no decision was reached. She said she wrote the first part of the staff report and Don Lamb wrote the amendment.

She then referred to the staff report that gives an overview of the following terms and regulations:

- Exemption A,
- Parent tract,
- Parcels/parcelizations,
- Lots,
- Minor subdivision,
- Rural estate subdivision, and
- Major (residential) subdivision.

Gary Schroeder asked Kathy Lind to recap the current regulations for land division.

Kathy Lind said 10-acre tracts are the smallest tract that can be created without parcelizing or subdividing. A parcel is defined in the UZO as a piece of land created by parcelization, whereas lots are created by subdivision. She explained that a parent tract is the shape and size of a property as of November 19, 1979. Old drainage maps from 1979 and 1980, old key cards from the Auditor's Office, and deeds are used to determine what is and what is not a parent tract. Each parent tract can have up to two parcels, up to four minor subdivided lots, or a combination of the two not to exceed four.

Sallie Fahey added that any remainder would have to be over ten acres.

Kathy Lind said we also have rural estate subdivisions and major subdivisions that are more urban because they require residential zoning (on sewer and water). Staff's proposed changes to the Unified Subdivision Ordinance would do the following:

- Make changes to the 200' parcel width requirement that will address concerns that have arisen over the years.

She displayed an aerial showing two, 10-acre tracts that came from a 20-acre parent tract decades ago. The property owner wanted to parcelize one of the 10-acre tracts into two parcels. The parent tract was oddly shaped and the parcel only has about 125' of frontage on SR 25 and not the ordinance required 200' of frontage. The proposed change will make the 200' standard applicable to only one public road when the parcel abuts two public roads. In a case where there is a physical impediment or the shape of a parent tract prevents a parcel from meeting the frontage standard, the APC Executive Director may waive the frontage requirement but the parcel must meet the minimum lot width requirement, (100' in the A zone).

- Create a farmstead parcelization exemption that would allow the division of a house and farm buildings from the surrounding farm field without being required to use one of the parent tract's four development rights. (To qualify, a residence must have existed since 1980 on a farmed tract of 30 acres or more.)

She then presented a slide showing a farmstead parcelization situation where a family wants to separate the farm ground from the farmstead. The property is 48 acres under one key number but all the development rights have already been used on properties across the road. The proposed change would allow the residence to be carved out from the farm ground provided the residence has been in existence since November 19, 1979 or earlier and located on a farm of 30 acres or more even though all the development rights have been used. She added that Sallie Fahey thinks the farm size should be 40 acres

or greater and she agrees that that makes more sense because 40 acres is more of a typical size for a farmfield.

Sallie Fahey said farm fields tend to be in 40-acre increments.

Gary Schroeder said you fall below the 40-acre minimum if you have a 40-acre tract and take the rights-of-way out.

Kathy Lind said they only need 40 acres to start with not what would be left after the farmstead is removed.

- Allow up to four parcelizations per parent tract (instead of the current maximum of 2 or four minor subdivided lots or a combination of the two techniques with the maximum number of lots/parcels (aka "development rights") being created totaling four.

Kathy Lind said she and Don Lamb added this change because before four parcels per parent tract used to be the standard, the ordinance changed in 2002. We already allow four minor subdivided lots so it makes sense to allow four parcels. The number still stays at four divisions meaning they will be allowed to do four parcels instead of having to do two parcels and two minor subdivision lots.

Sallie Fahey said reducing the number of parcels from four to two was part of the negotiation with the County Commissioners at the time staff did away with sliders, created rural estate subdivisions, and reduced the parcelizations to two. She has no major objection to this proposed change but more agricultural land is being used because parcelization parcels have to be a minimum of two acres.

Gary Schroeder said right now a person can do two parcels and two minor subdivisions with lots smaller than two acres but parcelization lots have to be a minimum of two acres.

Sallie Fahey said a person opting to do four parcelizations is giving up a smaller size for ease of creation of the land division. The smaller the size being created requires more scrutiny and a more robust approval process.

Tom Murtaugh said the process we are talking about does not change the zoning of a property.

Kathy Lind further explained that a minor subdivision takes a minimum of two months where a parcelization takes around a week or two because no public hearing is required.

- Change the Exemption A tract definition so that the minimum tract size is 20 acres instead of 10 acres.
- Allow tracts created by Exemption A of between 10 and 19.9 acres (created before the adoption of this amendment) to be divided into no more than two parcels. This division of Exemption A tracts would not count against the four development rights per parent tract.

Kathy Lind said this Committee talked about how 10-acre tracts are too big for a house but too small for a farm. The proposed amendment would make that change and allow tracts created by Exemption A (10 to 19.9 acre tracts) to be divided in two. The change would allow the tract to be divided and two homes built rather than one on the acreage that has already been taken out of farming.

Tom Murtaugh asked if the 10-acre tract can only be divided once.

Sallie Fahey pointed out that this is after all the parcelizations have already been created so now we are creating more lots.

Kathy Lind said that is a good question because she has a different proposal than Don Lamb. She thinks the proposed amendment should be clearer to answer that question. She said if the portion of the amendment passes as proposed the tracts will be 20-acres because we are doing away with 10-acre tracts. The only legally existing 10-acre tracts are those created from 1980 until passage of this ordinance and that is a finite number. She pointed out that the 20-acre tracts will not be able to be further divided but we would be allowing the 10-acre tracts to be divided once.

Jackson Bogan said right now the 10-acre tracts cannot be divided.

Sallie Fahey said the 10-acre tracts cannot be divided only if all the parent tract division rights have been used. We are talking about an owner or prior owner who used up all the development rights and someone comes along, buys one of the remainder 10-acre tracts, and wants to develop at the same time another person who owns a 10-acre tract wants to do the same. This seems to be a question of how much ruralish development we want to encourage. She thinks someone who buys a 10-acre tract purchases a 10-acre tract. There is no "given property right" that allows a property to be divided by right. She has the toughest time with this issue and proposed amendment.

Kathy Lind displayed a slide of the Hardesty property that is one of the three, 10-acre tracts and three parcels that were created out of the parent tract. There is a fourth division right left but the only one person can use it because if you divide ten acres there would be under 10-acres remaining and that is not allowed.

Jackson Bogan said he is confused by that statement and asked for clarification.

Kathy Lind said if she has a 10-acre tract and one division right remaining from the parent tract. The tract being divided has to be over 10-acres because the remaining tract has to be 10-acres. She then showed the Chitwood 10-acre tract that was one of four parcels created from a parent tract to the north. The Chitwoods would like to divide their property in two.

Tom Murtaugh asked if there is a downside to doing that in that something cannot be parcelized into something smaller than 10-acres unless the original parcelization had not been done.

Kathy Lind said that was discussed at the September meeting and it was part of the original proposal that the 10-acre tract had to have been in existence for "X ?" number of years before it could be divided. Staff's proposal has changed to make 20-acres the minimum but those with a 10-acre tract can divide it once.

Sallie Fahey thinks we are also talking about saying the tract had to be created before "Date ?" so there is no flurry of activity. That would prevent people from taking large acreages and dividing them into 10-acre tracts before the ordinance amendment takes effect.

Kathy Lind thinks that will work as long as we are clear that the 10-acre tracts that have been created since "Date ?" are still legal but just cannot take advantage of the ordinance change. She thinks the Chitwood 10-acre tract came into being in 2005 when one of the parcels was sold and before that time everything was one property. The properties/parcels were sold off one by one but no deed was recorded for the 10-acre tract until last month. She wants everyone to be aware the Chitwood property existed in 2005.

Sallie Fahey thinks there is no question when the property came into being but it is one of the oddities about the way our deed recording system works. Things would be much clearer if when a property was divided in two, two deeds would be created instead of one deed.

Kathy Lind displayed a map showing the tracts of 10 and less than 20 acres highlighted in red. The bright green areas are zoned AA, the yellowish areas are zoned AW, and remainder is zoned A. She then displayed a map showing tracts larger than 20-acres that are located in the three agricultural zones.

Tom Murtaugh asked why we need a set acreage balance on the farmstead parcels. He can understand why we want to know if the ground had been farmed.

Kathy Lind said she and Sallie Fahey know how easily these rules can be manipulated and then we would have sliders and other “bad stuff “ again.

Sallie Fahey said staff wants to make sure that it really is somebody’s farmstead. It is unlikely the property ever was a farmstead if the residence is on less than 30 or 40 acres.

Tom Murtaugh said if the property is less than 40 acres the owners could do a minor subdivision if all the parent tract rights have not been used up.

Sallie Fahey said if we are going to make this a concession for the farm community then we have to make sure it is the farm community that is using it and not somebody who has found another loophole.

Gary Schroeder said as farms consolidated it was standard for someone to buy the 30 or 40 acres of farmland and sell off the homestead. He is not sure why doing that would be limited to farmsteads of 30 or 40 acres. He thinks in some case the tillable land has been sold off but you are left with a small farmstead with no tillable land.

Jackson Bogan asked what the new tract size needs to be when a farmhouse is sectioned off from the farm ground.

Kathy Lind said the minimum lot size is two acres with no cap. She wanted to make clear that the 20-acre minimum we are talking about would just be for the rural zones. The minimum tract you can create in the other zoning districts would remain at 10-acres.

Sallie Fahey explained that occasionally industrial land gets sold without subdividing if the land is in the 10-acre range.

Jackson Bogan said in keeping with the spirit to keep this as a farmstead, picking an arbitrary date would help stop land divisions for development purposes.

Kathy Lind agreed and added that for a month or two people created 5-acre tracts like crazy the last time the ordinance changed in 1980 going from 5-acre tracts as the minimum to 10-acre tracts as the minimum. Staff would like to avoid that.

Jackson Bogan asked staff to pick the best date.

Gary Schroeder suggested June 1st.

Sallie Fahey thinks it will be easier to remember the date if we pick the first day of a year.

Kathy Lind said the Chitwoods, Hardestys, and Bennetts are all present if the Committee has any questions.

Gary Schroeder said going from 10 to 20 acres is a major change and he is not sure a lot of Ag people have heard about the proposed change or had a chance to comment. He would also like to hear from surveyors because 10-acres has been floating out there since 1979.

Sallie Fahey asked Gary Schroeder what his concerns are.

Gary Schroeder said he wants to know if there are people out there who are planning a development or doing something with their farm. He recalls that it was mentioned that farmers do not want to farm 10-acre tracts.

Sallie Fahey said that is one of the things that drove the farmstead issue. That was one of the reasons people said they should be able to take off the farmstead because nobody wants to farm 10 acres.

Gary Schroeder said he owns some farm tracts that are less than 10-acres and there are big farmers who do not want to mess with acreage that small. He knows there are farmers out there with older, smaller

equipment that specialize in farming smaller tracts. He has tracts less than 10-acres and he has no problem getting them farmed.

Jeanette Bennett, 624 Cumberland Avenue, West Lafayette, IN 47906, speaking for the Bennett Farm, said the farm has been in the family for over 100 years and her parents are now living in independent living. Her farmers wants to keep the farmland intact but sell the farmhouse with the buildings. She displayed a slide showing the farmhouse and the tillable ground surrounding it on three sides.

Tom Murtaugh said the proposed amendment will meet the needs of the family. He then asked if the red lines are the parcel lines.

Sallie Fahey said the red lines are slider lines.

Kathy Lind said often you cannot pay any attention to the red lines. The key number/card shows the property is 48 acres.

Kay Pairitz, 8323 West 1200 South, West Point, IN 47992, wants to make sure the Committee sticks to the *Comprehensive Plan* that does not allow a housing development in AA zoned ground. She said she fought for that years ago.

Tom Murtaugh said a property would have to be rezoned to R1 before a housing development can be built on it. It is likely there will be homes on the properties we are talking about.

Sallie Fahey said we plan to keep major subdivisions out of AA. She remembers that Kay Pairitz was part of the group that was concerned about sliders.

Adam Arnold, 4761 US 52 West, West Lafayette, IN 47906, speaking for the Chitwood family, said the family owns the last 10-acre spot of what once was the Bennett farm and said they want to create two, 5-acre lots and build two homes.

Chuck Hardesty, 3609 Mulberry Drive, Lafayette, IN 47905, said this discussion has been going on for about three months and everyone is trying to do the right thing. He referred to the aerial to highlight his 10-acre tract that he has owned since 2000. He has no plans to subdivide ground and only wants to get two, 5-acre tracts to build two homes. He supports staff's proposal and does not think anyone will be hurt if the proposed changes are made.

Jackson Bogan asked Gary Schroeder and Sallie Fahey about changing the exemption A tract definition to 20 acres while allowing 10 to 19.9 acre tracts to be subdivided (bullet points #4 and #5 if they were numbered). He asked if the intent is not to hurt the current 10-acre person.

Sallie Fahey said the proposed changes do not change the current rights of owners of 10-acre tracts. Going to 20-acres from here on out does not change any right for somebody who owns a 10-acre tract now.

Jackson Bogan said changing the ordinance as proposed will allow the 10-acre owner to divide the tract one time.

Gary Schroeder asked what going to 20 acres does for us.

Sallie Fahey said one advantage of going to 20 acres is that we have fewer people creating 10 acre tracts to sell for homes. While 10 acres are attractive for younger people who have a dream of moving out from the city and having a small farm. 10 Acres is manageable when you are in your 30's but as we age that size property becomes less manageable. She thinks if it is 20 acres we will have fewer people dividing their land to sell for housing tracts even as an acreage.

Carl Griffin said Gary Schroeder is concerned about the people who currently have 10 acre tracts and may have plans that they have not put into effect yet.

Gary Schroeder knows there was a rush when we went from 5 acres to 10 acres and he knows we are not doing that here.

Larry Leverenz asked staff to simply describe the problem we are trying to solve by going to 20 acre tracts. He knows there are several people that will do that so he wants to know if there is a basic problem.

Sallie Fahey thinks we are further implementing our adopted *Comprehensive Plan* in the following two ways:

1. Dividing less agriculturally zoned land into homesites, and
2. Trying to continue our goal of keeping the urban and suburban part of our community as compact as possible without leap-frogging developments until they start to look like an enclave and people assume it is a subdivision.

She said we had long conversations with farmers in the 1990s about rural estates and the slider loophole who were concerned about what it means for them to farm next to houses. The farmers complain about kids playing in the farm fields when they plan to spray. One farmer said he would ask the kids not to play in the field because he was going to spray pesticide. The kids would go back into their own yard to play. After spraying, the kids would come right back and play in the field. Those kinds of stories are part of what she believes is a bad mix of non-agricultural residences mixing with agricultural operations.

Gary Schroeder said he could go with 20 acre tracts if there is not a big push back. He is just concerned people are not aware of the proposed changes and wants to be sure we can revisit the subject.

Carl Griffin moved to recommend approval of the **AMENDMENT TO THE UNIFIED SUBDIVISION ORDINANCE REGARDING THE FURTHER DIVISION OF TEN ACRE TRACTS WHICH HAD TO BE CREATED PRIOR TO JUNE 1, 2018** to the Area Plan Commission. Gary Schroeder seconded and the motion was approved by unanimous voice vote.

Tom Murtaugh thanked staff for all the time and effort they put into crafting this amendment.

Sallie Fahey pointed out that amending the *USO* as proposed will require similar changes to the *UZO*, especially in definitions.

Don Lamb said he will look to see if any changes need to be made to the *UZO*.

Zach Williams suggested a motion directing staff to send a *UZO* amendment if any changes are necessary to be sent to the APC and recommended for approval with the previously recommended *USO* changes.

Carl Griffin moved to **DIRECT STAFF TO SEND A UZO AMENDMENT WITH ANY NECESSARY CHANGES WITH A COMMITTEE RECOMMENDATION OF APPROVAL WITH THE USO AMENDMENT RECOMMENDED EARLIER** to the Area Plan Commission. Gary Schroeder seconded and the motion was approved by unanimous voice vote.

III. REVISING THE STANDARDS FOR WIND FARMS:

A presentation by concerned citizens regarding changing the *UZO*'s existing standards regarding wind energy conversion system (WECS).

Julie Peretin, 10 North 19th Street, Lafayette, IN 47904, said the wind industry has made industrial wind turbines more efficient and much larger since this topic was last discussed in Tippecanoe County and the WECS ordinances were passed almost ten years ago. At the time our ordinances were more comprehensive than those in other counties in Indiana. Most ordinances were heavily influenced by wind developers with a common belief that industrial wind turbines spread across thousands of acres would be compatible with agricultural activities but the practical impacts and challenges of massive developments were not well-understood because it was assumed that interference with neighboring properties would be minimal. The 2007 WECS ordinance was updated in 2010 and 2012 because several developers were exploring projects that would be installed with turbines just over 300'. At a recent public meeting in southern Tippecanoe County, a wind company representative stated that the company would depend on our county government and its ordinances as protection for citizens and land owners. The developer was only concerned with protecting the viability of their project. The company has an internal safety standard setback that they apply

to all residences whether they are participating or non-participating. The presentation will cover the following points:

1. Why our WECS ordinance needs to be updated,
2. Discussion of the interference easement (new part of contracts being offered in the southern part of Tippecanoe County; and
3. Specific recommended changes to our WECS ordinance, Section 141.

She went on to say our ordinance categorizes industrial wind turbines as large wind systems, a WECS that has a nameplate capacity of more than 50kw per wind tower, a total height of 140', or a swept area of more than 40'. The CityBus wind turbines are considered large wind systems because they generate 100kw of power each and they are located in an I3 zone with the power being used on site. Her group is more concerned about the huge groupings of industrial wind turbines that are spread across thousands of acres of A and AA land that are typically developed by an LLC under a parent company with the power generated sold on the open market. Later we will look at recent ordinances approved in Indiana and Illinois and the impact development practices have on citizens that live within a project area but have chosen not to sign a lease or easement with a company. We are probably most familiar with the 200' to 350' turbines with a nameplate capacity of 1.2 to 2.5mw in Benton and White Counties that were installed several years ago. The newest turbines being installed in that area are 599' tall and turbines that are 800' tall are being considered by another company. In Illinois, turbines that were installed in the 2000s are being pulled out and replaced with newer, larger, more efficient machines. She then displayed the specs from the latest proposal she heard about at a public meeting in Tippecanoe County last August and the proposed turbines are twice the size of the turbines proposed the last time the ordinance was updated. She referred to the handout distributed to the Ordinance Committee several months ago that shows the counties that do not permit industrial wind development highlighted in green. The light green highlighted counties have good protection and the counties highlighted in yellow either have a moratorium in place or are actively working to improve their ordinance. Counties highlighted in red have community action groups advocating for improvements with the black highlighted counties having the developer standard 1000' from a residence requirement. The next slide shows the population densities and the most highly populated counties are highlighted in green or yellow. In the intervening years the contracts that have been offered to the landowners now have interference easements. Interference easements are tacit acknowledgements that there are effects on the land and on citizens while industrial wind turbines are installed and when they start running. "Affected land" is land located within one mile of an industrial wind turbine and people living in this area cannot opt out of the affects imposed on them by the development. She is most concerned with non-participating land owners because developers come into an area, distribute information to large land owners, and record leases. The land is considered participating land once a property owner signs an agreement to lease their land or provide an easement. Many of the people that recently signed leases merely own the land and do not live in the project area. She then presented language from a sample contract presented to someone in her group. Our ordinance allows a person to waive the setback requirements. The interference easement creates an easement for electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical radio interference, shadow, and other effects attributable to the wind turbines or any wind power activities. She feels participating land owners have signed away their ability to litigate. Many companies also included non-disclosure clauses so participants cannot speak out about any interference. Participating land owners are compensated greatly for signing away their rights. Adjacent land owners to wind developments are often eligible to enter into good neighbor agreements to compensate for wind turbine interference on their property. An interference easement must be purchased by a wind developer and compensation for those who do not sign a good neighbor agreement should be in the form of a greater setback. There are several reasons large and small land owners may not sign agreements. The Tippecanoe County WECS ordinance requires a 1200' setback from a turbine for those who do not sign a lease on their land but there is no setback restriction on participating land and there can be a 750' setback from the turbine to the property line. It was mentioned repeatedly at the August meeting that the internal company setback is 1500' to any residence and she assumes that is a safety setback. That would make the developer's safety setback more restrictive than our ordinance. A compromise was reached in 2012 that night sound limits (between 9pm and 7am) in I3 zones are 45dBA at the property lines even though background noise is much greater in industrial zones and in rural areas. A 40dBA limit reduces litigation and it is an internal standard announced by Invenergy but is becoming accepted by the industry. If the rules are written by the developer the balance between protection and development is skewed. It is important that citizens that will be impacted be considered when writing ordinances. A developer can show support for a project by signing up a large number of land owners in an area all will allow them to waive many setback restrictions. Other jurisdictions have found that setting more restrictive limits reduces the number of complaints from citizens and also

reduces the amount of time county officials spend checking to see if the development is in ordinance compliance.

Jim Pairitz, 8323 West 1200 South, West Point, IN 47992, distributed copies of proposed changes to the WECS ordinance and he said he will be going through each change one at a time.

1. Change the language to include the two lighting effects (like shadow flicker & flash) wind turbines introduce into and around a wind development.

He explained that “by the nighttime light” is what you see on a turbine at night and “shadow flicker & flash” is a pulsing effect caused by the shadow of the moving blades or the reflection of the sun off the blades. He is proposing the developers use ADLS lighting to reduce the nighttime light annoyance because the lights are off until a plane in the area turns the light on. When the plane leaves the area the light goes back off. The lights are FAA approved and there are places where the lights have been in use since 2016. He distributed information about the lights and listed several places where using the ADLS lights are required by law. Shadow flicker and flash are very annoying and noticeable within ½ mile of a turbine. The problem can be eliminated by siting the turbines far enough away (½ mile). He would like to see no flicker or shadow on a non-participating owner.

Jackson Bogan said he is not seeing any of the verbiage Jim Pairitz talked about in the proposal.

Jim Pairitz said the proposed language in on page 11, subsection (s).

2. Infrastructure setback

Jim Pairitz said he is recommending changing from “no less than 1.1 times” the total height of the wind tower to “no less than 2.0 times” the total height of the wind tower. Making that change will protect the power lines in the area and reduce the shadow flicker on the roads. He thinks it would be interesting to know what setbacks wind farm developers have for their infrastructure.

Sallie Fahey asked if we currently include the top of the swept area as the total. She explained that is has been a long time since she looked at our current ordinance.

Jim Pairitz said the total height of a tower is measured to the tip and that is the top of the swept area.

3. Property line setback

Jim Pairitz thinks this is an important piece of an ordinance that protects people. Measuring limits from property lines eliminates granting “interference easements” without permission from the landowner. This Committee originally recommended property line setbacks but that decision was reversed. He said the ordinance should require a large wind system to be located at least 10 times the rotor diameter of the WECS measured from the center of the WECS tower to the property line of a non-participating landowner. Currently the ordinance requires the tower to be 750’ from the property line of a non-participating land owner and at least 1200’ from any dwelling on a non-participating landowner’s property.

Jackson Bogan asked what interference Jim Pairitz is talking about.

Jim Pairitz said the diagram is accurate in the display of its effect. The gray hashes are the intrusion. He said it was mentioned earlier that people sign a lease or easement agreement or a good neighbor policy agreement (tolerate all the side effects).

Tom Murtaugh asked the rotor diameter of the blades in Julie’s demonstration.

Jim Pairitz said the rotor diameter is 427’ for the turbines that are being proposed now.

Julie Peretin said the rotor diameter is about 200’ for a 300’ high turbine.

Jim Pairitz pointed out that the ordinance matches the developer’s contract.

Jackson Bogan thinks that Jim Pairitz is asking for 4 times the current setback.

Jim Pairitz said that is correct and he will explain why he believes that is the correct setback. He thinks the current figures were put in to allow the development without consideration for the area residents. He added that our ordinance allows people to waive the setback requirements. Larger setbacks mitigate many issues unique to wind towers, they are easy to determine, affected individuals have more control, mitigates low frequency sound effects, and eases the vibration effects. He then displayed ordinance setback requirements from other counties in Indiana, Illinois, and other US locations.

4. Safety setbacks

Jim Pairitz said ice throw, blade failure, fire, and catastrophic failure are the issues mitigated by protective setback limits. He suggested requiring the wind company to provide an unredacted operations safety manual for the wind turbine model they will be installing before a permit is issued. The manual can be used when setting a minimum setback for a non-participating property line and from a participating residence. He went on to say the turbines are too high to extinguish a fire so they have to let the fire burn out.

5. Ordinance language for sound

Jim Pairitz said the current ordinance states the noise produced by the wind turbine heard off site shall not exceed 55dBA but he would like to see that changed to 34dBA. He agrees this topic can be discussed for hours but he is not prepared to do that. He suggested staff talk with technical people and research what is already out there and figure out the right number. He thinks the best solution is to have no turbine sound added to the environment.

Julie Peretin said when she looked back at old County minutes where the WECS ordinance was discussed it seemed like there was a decision to allow development in AA land but she believes that decision may no longer be as benign and compatible with industrial wind turbines as first thought. Turbine technology and limited wind resource in Tippecanoe County makes developers use larger turbines that will dominate the landscape and soundscape of the quiet, open, and bountiful rural area. She thinks we will need to look at height restrictions, decommissioning, construction impacts, and vibration at another time. She said we should remove wind farms permitted by special exception in rural zones (A, AA, AW) but still keep the micro-WECS, small systems, and meteorological towers. She pointed out that none of the projects that have been proposed in the last 10 years have materialized. The current project has been fast-tracked but the developer has not submitted anything to the FAA yet even though is a free process that has to be gone through to get height clearance from the airport. Also, no agreements have been signed to get on the Mid-continent Independent Systems Operators grid queue and so far the developer has less than 5000 acres of land easements and leases recorded when the project area will cover 36,000 acres. The requested changes have been prioritized and are as follows:

- Eliminate shadow flicker and blade flash on non-participating land,
- Measure all setbacks from the property line of non-participating land, and
- Base setbacks on ratio of dimensions for proposed turbines.

She welcomes any chance to meet and talk with county leaders and elected officials. The group she is a part of has a vast library of demographics, property values, income projections, and long-term potential loss of assessed value of the tax base. She summarized by saying sufficient setbacks are the best defense and thanked the Committee for their time. She and her group will keep showing up until the WECS ordinance is updated.

Nick Edwards, 1 South Wacker Drive, Chicago, IL 60611, said he is a manager for a wind energy development company called Invenergy and he wants to talk about the presentation we have just seen. He works in the Midwest region that covers Iowa, Indiana, Illinois, and parts of Missouri. He has seen similar presentations throughout his region and other states as well. The presentations are generally pulled off anti-wind websites and almost every place where the requested setback guidelines and other suggestions have been implemented has eliminated the possibility of a project. A wind farm is a participatory model so land owners opt into the project. His company advises the land owners to get independent legal advice and the cost of that legal advice is reimbursed by the development company. Fair bargains are negotiated. It is not as simple as saying the setback is 750' and the noise criteria is "x" because the company is guided by the strictest requirements. Having a mandatory ½ mile setback takes away the possibility and feasibility of the projects in terms of siting. We have to follow the local ordinances as well as the FAA requirements. There is currently one operational wind farm in America using the ADLS system and it is in Wyoming. ADLS is developing technology and Invenergy will consider those things because they are a responsible developer.

He does not want to get into the details of the earlier presentation because he feels the details can be talked about later but it is the company's position that the wind ordinance takes into account all the setback considerations and noise criteria. The details are expressly understood and it is the company's position that it is one of the strictest ordinances out there. The ordinances with stricter criteria cited earlier does not have a wind farm in development in that county because those criteria kill wind. There was a ballot item in Livingston County to increase the setback requirements but the residents of the area that hosted the wind turbines voted against the increased setback measures. Residents not in the immediate area of the wind farm wanted the increased setbacks. He thanked the Committee for allowing him to speak and he believes the bottom line is all about what is reasonable, practical, and fair. He thinks the current ordinance and best practice in the industry are taken into consideration. The setbacks being requested and asking that the shadow flicker to be eliminated are impractical and absurd requests. Invenergy wants to work with the community and wants the Committee to know the company has had an interconnection position for the proposed project in Tippecanoe County since last year. He feels the company is getting great land owner participation and that is what this all boils down to. If land owners want to participate they will and if they don't want to participate they won't. Participating land owners often can keep their family farm and diversify their income through yearly lease payments and the wider community also benefits because of the increased property taxes. He and other members of his team will be available to answer any questions.

Jackson Bogan said our current property line setback is 750'. He asked Nick Edwards what he sees as a normal setback in the areas where the company is developing.

Nick Edwards replied that he has developed projects where the property line setback has been 600'. Right now a ½ mile setback is not feasible. He feels 750' is as high as the property line setback can go to keep the wind farm doable.

Jackson Bogan asked Nick Edwards if he has done any developments with 1000' or 1500' property line setbacks.

Nick Edwards said he has never done a development with a property line setback that large.

Sallie Fahey asked if the 600' is from the residence or the property line.

Nick Edward explained that the 600' is from a non-participating property line. He went on to say that even if the setback requirement is 1200' from a non-participating residence; if the model shows that does not satisfy the noise criteria adjustments will need to be made.

Tom Murtaugh said our current setback is 1200' from a non-participating residence.

Jackson Bogan asked if the wind towers are getting larger as stated earlier.

Nick Edwards replied that the towers are definitely getting bigger over time as the technology improves. Fewer turbines being sited within a project is one of the benefits of increasing the size of the towers. Often a project can go down from 100 to 75 when larger turbines are being used.

Tim Strueh, 629 Bennett Road, Linden, IN 47955, said we need to keep in mind that this is an ordinance for all 25,000 residents living outside the cities in Tippecanoe County and these rules can affect over 75,000 people. People will be unable to divide, sell, and build a home on the 10-acre tracts we talked about earlier in the meeting if wind turbines are sited near those 10-acre tracts.

Jackson Bogan asked if there was talk about increasing the setbacks if the turbine size increased when the WECS ordinance was discussed over 10 years ago.

Sallie Fahey said that was not discussed because we never thought the towers would be as tall as they are today.

Tom Murtaugh thinks that is the biggest failure of the current ordinance that the setbacks were not tied to the size of the height of the tower.

Sallie Fahey said we also could have capped the tower height.

Tom Murtaugh said a number of changes have been proposed and he wondered if it would make sense to put a committee together to work on a proposed ordinance.

Sallie Fahey said that is what the Ordinance Committee does.

Zach Williams said often it makes sense for staff to vet an idea, meet with the community, and representatives from both sides of the issue. Staff can then form an opinion and make a recommendation to this Committee.

Sallie Fahey agreed with Zach Williams and added that staff can research specific items the Committee is interested in.

Tom Murtaugh referred to the map Julie Peretin displayed earlier and asked how many of the counties on the map actually have wind farms.

Kay Pairitz said Benton, White, Randolph, Jay, Tipton, and a little of the Tipton project extending into Madison have wind farms.

Tom Murtaugh said those counties have projects that are under construction or currently producing.

Sallie Fahey asked if there are any other wind farms on the horizon.

Kay Pairitz said there were several RES projects up north but all the citizen groups complained resulted in the county ordinance being changed. She wanted the Committee to know that her group did not get their information off the internet. She got copies of county ordinances and did hours and hours of research in addition to talking with numerous people in many different counties.

Jackson Bogan asked APC staff to look at the turbine height issue. No one has mentioned the number of turbines allowed in a particular area or the amount of energy the turbine produces so he is thinking higher turbines, taking less amount of acreage and producing the same amount of energy might be a win-win for all. He thinks the energy companies will want to put more turbines in to make more energy when that might not be the best solution for everyone involved.

Sallie Fahey asked if Jackson Bogan is talking intrusion versus efficiency.

Larry Leverenz thinks the problem with that is that technology changes. Putting restrictions or numbers like that the technology changes might make the project not fit any longer. He thinks there has to be a better way to do it. He suggested staff look at that option also.

Gary Schroeder thinks we should look at the current ratio of setback to tower height to see where we are now and compare it to the setback needed for the same ratio with the new tower heights.

Sallie Fahey thinks Gary Schroeder is asking for a ratio projection between height and current setback and a ratio projection of typical height now to the current setback and setback needed to maintain the same ratio we have now.

Dawn Hays, 6100 Maple Forest Road, West Point, IN 47992, said this whole power point presentation is on the internet. She asked the committee how much time they spent on this issue and the presentation. She knows a lot of time and effort was put into the presentation.

Mark Russell, 6001 Maple Forest Road, West Point, IN 47992, thanked the Committee for their time and reminded the Committee that his group is here for the citizens of Tippecanoe County. This subject has long reaching effects and the contracts he is hearing about are for 25-years with an extension option. He thinks the towers will be obsolete long before the contracts run out, the original investors will no longer be involved, and the towers will be abandoned. He asked the Committee to protect the citizens of Tippecanoe County. He has been talking to people and this subject is not as popular as the Committee has been led to believe. Most

of the people he has talked to did not even know this was happening. The wind energy has flown in under the cover of darkness and been operating in secret. He said it was clear the Committee was interested in preserving the prime farmland in Tippecanoe County when discussing dividing 10-acre tracts earlier in the meeting.

Jackson Bogan asked Sallie Fahey how long it will take for staff to conduct the research and report back to the Committee.

Sallie Fahey thinks staff can have something ready for the Committee for the December 5, 2018 meeting.

IV. CITIZEN COMMENTS:

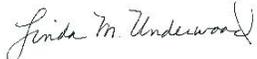
None

VI. ADJOURNMENT:

Gary Schroeder moved to adjourn the meeting.

The meeting adjourned at 6:55p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director

Memorandum

To: Ordinance Committee
From: Kathy Lind, Senior Planner & Sallie Fahey, Executive Director
Subject: Quarrying and mining of materials in the Flood Plain zone
Date: November 1, 2018

Attached is a proposed ordinance amendment showing changes to the Permitted Use Table of the Unified Zoning Ordinance. Additional proposed changes to the text of the UZO will be ready for distribution tomorrow, November 2nd.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. _____ BEING THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY.

Be it ordained by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No. _____, being the Unified Zoning Ordinance of Tippecanoe County is hereby amended as follows:

Section 1: Change **UZO Section 3-2 Permitted Use Table** by adding the following two entries after SIC Group 14 **Mining and quarrying of nonmetallic minerals, except fuels** as shown below:

Park. Grp.	Special Cond.	SIC Group	Permitted Primary Uses	I3	A	AA	AW	RE	FP
11	2-27 if FP, 4-11-4, 4-9-7, 4-4-8	14	Mining and quarrying of nonmetallic minerals, except fuels	S	S	S	S		S
11	4-11-4, 4-9-7, 4-4-8	except: 141	Dimension Stone	S	S	S	S		
11	4-11-4, 4-9-7, 4-4-8	142	Crushed & Broken Stone, including Riprap	S	S	S	S		

This ordinance shall be in full force and effect from and after its passage.

UZO Amendment Regarding Quarry Operations and the FP Zone

UZO 1-2

WHEREAS, the Area Plan Commission of Tippecanoe County has given reasonable consideration, among other things, to the present characters of the ~~districts~~ **zones, especially the Flood Plain Zone**, and their peculiar suitability for particular uses, with a view of conserving the value of buildings and lands and encouraging the most appropriate use of land throughout the participating county, cities and towns; and

2-17 Flood Plain Zones

2-27-1 INTENT:

In accordance with IC 36-7-201(b), IC 36-7-4-601(c)(1) and (2)(D), and IC 36-7-4-503(2)(I) to protect lowland areas adjacent to lakes and ponds and areas that are within the **flood plain** of **watercourses** and **watersheds** all of which are subject to inundation and damage from flood waters up to the elevation of the **regulatory flood**. (Amend 56) **Floodplains are some of the most valuable ecosystems on earth. They are nature's best defense against destructive floods and provide essential habitat for wildlife, improve water quality, and protect human communities. Land use activities, including uses with buildings and open uses, that increase risk to the proper functioning of the floodplain, ground water and surrounding properties are prohibited. The Flood Plain zone regulations make a further distinction within SIC 14 – Mining and Quarrying of Nonmetallic Minerals, Except Fuels, between mining and quarrying SIC 141, 142, 145, 147, 148 and 149 and operating sand and gravel pits SIC 144. The distinction recognizes the increased risk to other properties from blasting and dewatering, activities not associated with SIC 144 sand and gravel operations.**

Violations Subject to Ticketing & Fines

Revised Draft 10-31-18

Land Use Violations

- 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

- 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

1 st citation	\$200]	
2 nd citation	\$300]	or double the prior fine each time
3 rd citation	\$400]	

Development standard citation

1 st citation	\$100]	
2 nd citation	\$200]	or double the prior fine each time
3 rd citation	\$300]	

After 3 issued citations, legal action will be taken.

Additional Discussion Items

- Should a letter or verbal notice be given prior to issuing the 1st citation?
- How many days should the property owner/operator be given to pay the fine?
- How many days should elapse without payment before another citation is issued or the first fine collected?
- If the citation fine is paid and the owner/operator begins the compliance process how long should they have to comply?