

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

DATE.....JANUARY 3, 2018
 TIME.....5:00PM
 PLACE.....COUNTY OFFICE BLDG.
 20 N. 3RD STREET
 LAFAYETTE, IN 47901

MEMBERS PRESENT

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

MEMBERS ABSENT

STAFF PRESENT

Sallie Fahey
 Ryan O’Gara
 Cat Schoenherr
 Kathy Lind
 Rabita Foley
 Zach Williams, Atty.

OTHER APC MEMBERS PRESENT

OTHER ATTENDEES

Steve Clevenger
 Chad Spitznagle
 Bryce Patz

Chair Tom Murtaugh called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the October 4, 2017 Ordinance Committee meeting. Greg Jones seconded and the motion passed by unanimous voice vote.

II. BUFFERYARD STANDARDS:

Continued discussion on proposed 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 at the October meeting and staff was directed to make some changes and bring back a proposed amendment. Originally staff was proposing a bufferyard ordinance for all the jurisdictions except for West Lafayette who plans to go with an all evergreen bufferyard option. The Committee asked staff to discuss the issue with the Administrative Officers to see if the other five jurisdictions want an all evergreen option. She is happy to report that all jurisdictions are agreeable to the new bufferyard amendment being presented to the Committee tonight. In the new proposal, the all deciduous tree requirement has been removed and changed to an all evergreen requirement. Making this change has simplified the amendment while maintaining a sustainable bufferyard requirement. She went on to say we still have three types of bufferyards (A, B, & C). The Type A bufferyard is the lightest and has all evergreen trees with an option to install shrubs that are not evergreens. The Type

B bufferyard will have all evergreen trees and shrubs. The Type C bufferyard is the densest and will have all evergreen trees. She added that Type C bufferyards are required when industrial zoning is adjacent to residential zoning. We currently have three types of bufferyards and the only thing changing is that all the deciduous tree/shrub options have been removed. She referred to the staff report and said she included references to specific proposed changes to make it easier to discuss them. The references also correspond to the memorandum that was included in the packet.

Reference #1

Sallie Fahey asked why we settled on showing standard plant units at 30' intervals when we have to do it at 150' intervals. She would prefer to see what a 150' bufferyard would look like.

Rabita said that can be done but it might not be practical because of the size we have to maintain. She went on to say the standard plant unit has already been established and developers already understand.

Sallie Fahey thinks it is confusing for the novice because the illustration is only showing 30' of plants when the requirement is 150'.

Rabita Foley said we can try to show a 150' bufferyard but the illustration will not be as clear.

Sallie Fahey said if we cannot illustrate the bufferyard at 150' we should have it say "times 5" on the 30' illustration.

Rabita Foley said there is a chart on the first page of the proposal that states that but we can make the change to the illustration.

Carl Griffin pointed out that the reference *1a* states the number of standard plant units needed for the bufferyard. *1b* states the same thing.

Gary Schroeder said the ordinance will require a bufferyard to be designed by a landscape architect.

Jackson Bogan understands Sallie Fahey's point of view because he was concerned at first.

Rabita Foley does not feel the wording/illustration is confusing because by the time a developer is ready to bring forward a subdivision proposal (residential or commercial) they would have gone through different types of subdivision processes. The developers we work with provide staff a plant sheet and a landscape plan with the bufferyard proposal included.

Sallie Fahey thinks we are mixing what we used to have with what we are proposing. Using fewer than five standard plant units per 150' is not allowed anywhere. She thinks it is confusing and we should not show the 30' dimension at the bottom unless it says every 30' for 150'.

Carl Griffin said the illustration is only for scale and allows a developer to count how many trees and shrubs are required around a property boundary.

Sallie Fahey said she is not sure we need the 150' any longer. She said the Committee is newer to this than staff is so the Committee can decide if the illustration is confusing or if we should leave it as it is.

Larry Leverenz does not think it is confusing and he thinks it will be hard to calculate the number of shrubs needed if the illustration is for a 150' bufferyard. He thinks he would know exactly what he has to do by looking at the amendment as presented.

Tom Murtaugh thinks we do not need the 150' any longer and should just say a "plant unit" is required for every 30'.

The Committee concurred.

Larry Leverenz said it is confusing looking at the requirements because it does not say "and" between the tree and shrub requirements in the Type A and Type B illustrations (reference *1c*).

Rabita Foley said that is a staff error because trees and shrubs are required. Staff will add the word “and” between lines one and two of the illustrations. She added that the Type B plant descriptor should say “five” shrubs and not “six”.

Sallie Fahey said 4-9-4(B) (reference 1b) could be narrowed to say “increments of 30” and that should give us more trees because now we are just down to a percentage of 30’ instead of a percentage of 150’.

Jackson Bogan asked if a denser bufferyard than what is required can be installed.

Rabita Foley said the ordinance shows the minimum bufferyard requirement so she thinks it is okay to install a denser bufferyard.

Jackson Bogan asked if a developer has an option to install a different type of bufferyard than what is listed.

Bryce Patz 222 North Chauncey, West Lafayette, IN 47906, West Lafayette Greenspace Administrator, said the proposed ordinance has language requiring Administrative Officer (AO) approval and the AO will determine if the proposal is appropriate. The AO will approve plant materials and how the bufferyard is planted.

Sallie Fahey said the proposal should state “deviations from the standard plant units shall be approved by the Administrative Officer”. Using that language will cover overages, species changes, etc.

Bryce Patz said it is his job to enforce this part of the zoning ordinance as well as West Lafayette’s ordinance. AO approval allows his office to catch mistakes before a bufferyard is installed.

Tom Murtaugh asked if the 3’ high shrub referenced in Type A has to be an evergreen.

Rabita said required shrubs in the Type A bufferyard do not have to be evergreens.

Tom Murtaugh said a Type A bufferyard requires 3’ high shrubs but the Type B does not state a size the evergreens need to be.

Rabita Foley said the shrubs in a Type B bufferyard should be 3’ high and that change will be made.

Sallie Fahey pointed out that “evergreen tree”, “shrubs”, and “evergreen shrubs” are in bold italics meaning they are defined terms. She asked if the definitions are okay with the changes we are making.

Rabita Foley thinks they are defined terms but if they are not we will define them.

Zach Williams said “evergreen” is defined in the ordinance and also “tree” but “shrub” is not defined.

Tom Murtaugh asked if all three bufferyard types are similar in pricing.

Bryce Patz said he purchases trees twice a year so he is fairly up to date on current pricing. Type A is the cheapest option because there are inexpensive choices to use as the 3’ high deciduous shrub. The Type C bufferyard is the most expensive because it requires a larger amount of tree material. A wholesale nursery will drop their prices when you are buying a larger quantity.

Larry Leverenz cannot find where it states that there are options to the requirements.

Rabita Foley suggested including the wording “minimum requirement”. 4-9-1(b) states that the standard plant units must conform to the illustrations or their functional equivalent as approved by the AO. She reads that as giving the AO the authority to allow the installation of a more intense bufferyard. She said we also can add “minimum requirement” language.

Sallie Fahey said we should just add “at a minimum” after “illustrations” in 4-9-1(b).

Larry Leverenz said that is still vague.

Sallie Fahey said we can add a sentence stating, "all these standards are minimum requirements and additional plantings are allowed with AO approval".

Bryce Patz would like to see the language Sallie Fahey mentioned in the ordinance because he and his staff have the ability to work with the developers and that makes his job easier.

Carl Griffin suggested staff make the requested changes and the Committee move forward.

The Committee concurred.

Reference #2

Rabita Foley said 4-9-2(d) gives the AOs the ability to decide whether or not a bufferyard is required when the adjacent properties are owned by the same entity but have different zoning.

Reference #3

Rabita Foley displayed a sketch to demonstrate what we are trying to accomplish with 4-9-2(e). Currently a bufferyard can be co-located in a platted easement but staff is proposing that bufferyards not be located in 15' utility easements.

Jackson Bogan said that seems like an expensive change for a developer because we are taking an additional 20' of property.

Rabita Foley explained that this addition came about because there are property owners/developers who were using the existence of a utility easement as an excuse not to plant the required bufferyard.

Jackson Bogan asked for language stating that the presence of a utility easement cannot be used as an excuse not to install the required bufferyard.

Sallie Fahey said the *Unified Subdivision Ordinance (USO)* requires a Dedication Certificate to be signed on every final plat by the developer which includes a statement regarding easements. The Dedication Certificate says "Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction and flow of drainage channels in easements or which obstruct or retard the flow of water." We have said easements shall be free of things that interfere with utilities for the last 40 or 50 years. It is her opinion that this ordinance amendment change makes it clear and supports what subdivisions already have to abide by.

Tom Murtaugh asked if people assume they can use the easement for a bufferyard because the ordinance does not say they cannot.

Sallie Fahey thinks that is correct. An AO who does not regularly deal with the *USO* may not have known this was in the Dedication Certificate. When staff issues permits for new homes for the three towns, staff specifically writes on the permit that fences are not allowed in or across the utility easement.

Tom asked what happens when a utility needs to remove a bufferyard that was installed in a utility easement to perform needed utility work. He thinks we have no teeth to rebuild a bufferyard when that happens.

Sallie Fahey said in instances like that we are relying on the utilities' good graces to put back what they removed or take enforcement against the property owner because the owners are the ones required to have the bufferyard.

Tom Murtaugh asked if this point was discussed at the AO meetings.

Rabita Foley said this issue was discussed by the AOs only one time.

Gary Schroeder agrees with Jackson Bogan that the requirement is harsh but he is not sure what the solution is. He added that he does not think bufferyards should always be required between zones just because the zones are different. He said most bufferyards are on the rear property line.

Gerry Keen said he tends to agree with the proposal because it specifically defines a rule that is already in place. It gives a greater clarity to our intent.

Jackson Bogan said a developer can build on the setback line. He asked what we actually are talking about.

Tom Murtaugh explained that there are instances where the building setback is only 6'. Adding the easement to that means that the actual building setback is 21'. In that instance a bufferyard would add another 20' to the setback making it 41'.

Gerry Keen said that is a large setback but it will eliminate problems down the road. He knows he would be upset if his residence backed up to a use where the setback should be 41' but the owner used the utility easement for the bufferyard making the use 21' from his property.

The Committee asked staff to take this issue back to the AOs for more input.

Gary Schroeder suggested staff review some plats to see how often there would be a big change.

Sallie Fahey said staff may have already taken care of the worst cases during the subdivision process because she cannot recall any specific cases. Staff can look at a commercial subdivision on the south side of Veteran's Memorial Parkway just west of WalMart where there is a street that circles around between the Parkway and Concord. In that location there are residences/apartments on the east side of that commercial subdivision with a platted bufferyard. We can see if there is an easement at that location.

Gerry Keen asked if this proposed change would have made any difference with the people in West Lafayette behind Aldi. He thinks the proposed ordinance will clean up an existing issue going forward.

Sallie Fahey said many parts of the proposed amendment would have made a difference to the residents behind Aldi. Staff has also talked about barriers as well as planting for the specific situation Gerry Keen is talking about.

Reference #4

Rabita Foley said the Committee discussed moving the OR zone to the NB, MR, GB, and HB column. Staff discovered there is a section in the ordinance where a bufferyard is required when GB or OR zoning abuts FP and that does not seem practical.

Reference #5

Rabita Foley said this portion of the amendment states that the bufferyard plans must be prepared by a registered landscape architect.

Reference #6

Rabita Foley said this section was discussed earlier and applied to the West Lafayette resident complaining about noise and pollution from the Aldi loading/delivery dock abutting her property. She added that this proposed section is in the off-street loading portion of the ordinance and is not part of the bufferyard section. Staff is proposing that every area that has a loading berth be required to install a dense planting of approved evergreen plant materials and an 8' high noise barrier structure or a dense planting of approved plant materials and an 8' high noise barrier structure.

Reference #7

Rabita Foley said #7 adds a definition of a "noise blocking structure".

Sallie Fahey asked if we are using “barrier” or “blocking” because both terms have been used.

Rabita Foley said we can use either term.

The Committee reached a consensus to use the term “barrier”.

Jackson Bogan asked if we have a way to measure dbAs.

Rabita Foley said the AOs agreed that the burden is on the owner to prove the noise levels generated are at or below the acceptable limits.

Sallie Fahey said she learned from an Audiologist that there is an app you can put on a cell phone to measure dbA levels that is fairly accurate.

Gerry Keen asked if dbA level and height should be approached separately. He thinks there is too much subjectivity in allowing 65- 85 dbA and a barrier 8’ to 10’ in height. He thinks we should pick a number for level and height and stick with it.

Carl Griffin thinks we need input from someone familiar with industrial hygiene before finalizing this section (#7). An industrial hygienist can give staff practical advice on what we are trying to say because the proposal is very ambiguous. What are we asking the noise to be reduced to if it is 85dbA. Staff needs to determine an acceptable noise level because you would have to enclose the noise source to reduce a noise level to 85dbA.

Sallie Fahey said we have to determine an acceptable noise level for any level of noise to be reduced to.

Carl Griffin said the ordinance says the property line for an industrial land use must have a sound level not to exceed 50dbA. He cautioned that 50dbA is a whisper and a person speaks at about 65dbA. 50dbA of noise at a property line is a great situation. He does not think the Committee has the resource to give the right advice.

Rabita Foley asked if there is a way to achieve our goal without using numbers.

Sallie Fahey said it is easy to measure noise levels at a property line.

Carl Griffin concurred. He added that it is his business what he does on his property and the property line is the critical point. He thinks the ordinance should be worded to say “the noise level at the property line does not exceed X”.

Gerry Keen said every city has a noise ordinance that the police enforce all the time. He asked if we can use similar language in the ordinance.

Rabita Foley said she looked at other zoning ordinances regarding noise levels but thinks it is a good idea to look at city ordinances also.

Jerry Reynolds said the City of Lafayette had or has a noise ordinance because there was an issue at Staley South and the Fire Department had to go out there on weekends to measure the noise. At that time the city was trying to get the noise down to 150dbA.

Tom Murtaugh said there is a reference to noise in the wind turbine section of the ordinance.

Sallie Fahey thinks the noise section is part of the County’s ordinance and not part of the *UZO*.

Reference #8

Rabita Foley said staff will do research and the AOs will help staff come up with a species list.

Bryce Patz thinks the ordinance should simply have the developer look up the approved tree species list for the jurisdiction they are in. He knows that will be trickier in the county but he can easily change the plan species for West Lafayette when there are issues like with the Ash Borer.

Sallie Fahey said the County and towns can be directed to use the West Lafayette species list rather than coming up with their own lists.

Larry Leverenz asked if #6(2) should also refer a developer/owner to the approved list.

III. CITIZEN COMMENTS

None

VI. ADJOURNMENT:

Gary Schroeder moved to adjourn the meeting. Greg Jones seconded.

The meeting adjourned at 6:05p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director