

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

DATE.....FEBRUARY 6, 2019  
 TIME.....4:45PM  
 PLACE.....COUNTY OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

Tom Murtaugh  
 Jackson Bogan  
 Carl Griffin  
 Gary Schroeder  
 Jerry Reynolds  
 Greg Jones

**MEMBERS ABSENT**

Larry Leverenz  
 Gerry Keen

**STAFF PRESENT**

Sallie Fahey  
 Ryan O’Gara  
 Kathy Lind  
 John Burns.  
 Diana Trader  
 Zach Williams

**OTHER ATTENDEES**

Bill Miller  
 Barb Strueh  
 Jim Coplea  
 Tobias Johnson  
 Connie Harper  
 Stan Wanner  
 Ed Heatherington  
 Karen Vester  
 Dawn Hays  
 David Loser  
 Bob Osborne  
 Kathleen Riley-Beck

Kay Miller  
 Tim Strueh  
 Corey Snoeberger  
 Chad Spitznagle  
 Mark Albregts  
 Kay Pairitz  
 Julie Peretin  
 Bob Vester  
 Mark Russell  
 David Shaw  
 Grace Craig  
 Donald Thelen

Mike Wolf  
 Kitte Coplea  
 Dustin Snoeberger  
 Doug Milsaps  
 Louann Albregts  
 Jim Pairitz  
 Kenneth Byers  
 Lori Russell  
 Mary Deerr  
 Steve Hawk  
 Ann Bullock  
 Steve Clevenger

Chair Jackson Bogan called the meeting to order.

**I. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the January 2, 2019 Ordinance Committee meeting. Greg Jones seconded, and the motion passed by unanimous voice vote.

**II. ZONING ORDINANCE VIOLATION CITATIONS:**

Kathy Lind said this was a continuation of the discussion from the January 2, 2019 Ordinance Committee meeting. She said there were a couple of questions raised at that meeting about Zoning Ordinance Violation Citations. The first question was whether a filing fee should be charged to someone who wishes to file an appeal with the Board of Zoning Appeals for a zoning ordinance violation citation. Kathy said the other question was about the process for making initial contact with the “violator”. Kathy said she met with Mike

Wolf, Tippecanoe County Building Commissioner and Chad Spitznagle, City of West Lafayette Building Commissioner to address these questions. Kathy said they came up with the following changes to the Fee Schedule and these are listed on the last page of the Ordinance meeting packet:

### Fee Schedule

#### Land use citations

- First contact is a knock on the door; if no response, a citation notification is left at the door and a certified letter is mailed to the address of the site in question. (If the property is being rented, a second certified letter is mailed to the property's owner). This letter serves as notice of the violation and warns that they have a 15-day deadline to contact the Administrative Officer's Office and agree to a plan of action or a citation will be issued. (15 days is the same number of days state statute gives a property owner to file an appeal with the Board of Zoning Appeals.) Making the deadline 15 days gives the "violator" three choices:
  1. Agree with the Administrative Officer, contact the A.O. and begin to fix the situation;
  2. Disagree with the A.O. and file an appeal of the Administrative Officer's decision with the ABZA;
  3. Do nothing and be fined.
- If no contact and no appeal is filed in 15 days, the 1<sup>st</sup> citation of \$250 is issued.
- If no contact is made in another 15 days (30 days from the sending of the first letter), a 2<sup>nd</sup> citation of \$500 is issued.
- If no contact is made in another 15 days (a month and a half from the first letter), a 3<sup>rd</sup> citation of \$750 is issued and a letter is sent stating that legal action will now be taken. The Administrative Officer would be done with the violation at this point and the APC attorney would take over.

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

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

Carl Griffin asked whether the 3 options would be made clear in the initial letter.

Kathy Lind said that was correct. Kathy reviewed the consequences of ignoring a citation.

Kathy said the fees had been slightly increased.

Jackson Bogan asked what the reason was for doing that.

Kathy said it was because the response time had been increased from 7 days to 15 days.

Sallie Fahey said the issue did not have to be remedied in those 15 days, there just had to be contact between the "violator" and the Administrative Officer.

Zach Williams said he thought this was a good fix because if the "violator" wished to challenge the citation he would not be fined ahead of time and then still be required to pay a filing fee for the appeal process. This way no fines are issued until the appeal process has been completed.

Gary Schroeder asked about the filing fee for the appeal process.

Zach Williams said the fee for filing any kind of appeal with the Area Board of Zoning Appeals is always \$500. Zach said he had checked with other jurisdictions about filing fees. He said some jurisdictions charged higher filing fees and some jurisdictions charged lower filing fees than Tippecanoe County. Zach

said a BZA appeal for these types of violations is very intensive. He said it takes up a lot of APC Staff time and a lot of the Building Commissioner's time. It also takes a lot of time for the Board of Zoning Appeals to hear the case and that is why the filing fee is so high. Zach said the \$500 fee could be easily changed if the BZA wanted to do so in the future. He said the Ordinance Committee could make a recommendation to change the fee, but because the filing fee is listed in the BZA bylaws, that Board would have to make the change themselves. He said BZA could decide to continue to charge a \$500 fee for a general administrative appeal and then choose a different dollar amount for this type of diversion appeal. He said again that it is a lot of work to deal with a formal appeal. Zach said that if the Ordinance Committee wanted to make the recommendation to change the filing fee, he could pass that along to the BZA.

Gary Schroeder said that he and Carl Griffin are both on the BZA Committee and he felt that people might take offense at being charged \$500 to challenge the Administrative Officer's decision to issue a citation. Gary said that did not seem appropriate to him. He said he did not have a problem with the current staff but there had been problems with past Administrative Officers making calls on zoning violations.

Jackson Bogan asked what would happen if someone paid the \$500 filing fee and then won the appeal.

Sallie Fahey said the filing fee is to help to defray the cost to staff. She also said the BZA almost always has to hire its own independent legal counsel because Zach Williams ends up representing the Administrative Officer. Sallie said all types of cases require a filing fee. She said Ryan O'Gara did a great deal of research in 2014 to determine how other jurisdictions handled filing fees and as a result all the APC filing fees were updated in 2014. Sallie said the filing fee is the cost for someone having their day in court so to speak.

Jackson Bogan asked Sallie Fahey how many of these types of appeals cases she would expect to be filed.

Sallie said there are very few appeals filed for violation citations, one every ten years or so.

Zach Williams said it is a balance and staff feels there is a lot of added cost associated with an appeals case that had not been budgeted for. He said if a case goes as far as the appeals process, then there is a good faith basis for the citation having been issued in the first place. He said the Administrative Officer's are not writing citations without some basis in law or if they did it would be thrown out. Zach said some larger communities charge much higher filing fees than Tippecanoe County does. Zach said if the filing fees do become an issue then the board could certainly revisit the issue in the future.

Sallie Fahey said she did not want to give "violators" a cheap way to get out of complying with zoning regulations. She said that was the reason for increasing the citation fee schedule. Sallie said it can sometimes take a very long time to get a violation resolved. She said when other people who commit similar types of violations see that, then they think there is no consequence for continuing their bad behavior. Sallie said staff is trying to create a heavier consequence for violations in order to get people to comply with the ordinance.

Greg Jones motioned to send the ordinance forward to the March 20, 2019 Area Plan Commission meeting. Tom Murtaugh seconded.

Zach Williams said Kathy Lind and Mike Wolf need a little time to clarify the actual change to the ordinance. He said some of this may be incorporated as a fee schedule on file with the AO's office pursuant to what the Ordinance Committee approves. He said they would like to bring it forward to the full APC since they have spent so long working on it.

Jackson Bogan asked if the \$500 BZA filing fee could be easily changed at a later point in time, if a lot of complaints were received about it.

Zach Williams said because it is a BZA bylaw filing fee then he thought the way to change the filing fee would be to create separate filing fee schedules for appealing the violation citations. He said the Ordinance Committee could make a recommendation to the BZA requesting the change to the bylaws.

Sallie Fahey said that would be the process for changing the BZA filling fees, but she said the change in the citation fee schedule may need to go before the county commissioners because they approve all the fee schedules.

Jackson Bogan said he was speaking directly to the filing fee for the appeal.

Tom Murtaugh said the county has a fee ordinance that contains all fees for all departments. He said this proposed change would have to be a part of that and it would have to define where the fees will be deposited. Tom asked whether that was something that would be prepared through this process or if the commissioners would need to do that on their end.

Sallie said that would be between the commissioners and Mike Wolf. She said if Mike Wolf wanted her assistance, she would be happy to help. She said the other jurisdictions that pass this would need to follow their own rules for their fee structures.

Jackson Bogan asked for public comment and there was none.

Jackson Bogan said there was a first and a second motion to move this forward and it passed by unanimous voice vote.

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

A discussion regarding amending our current UZO regulations regarding wind farms.

Sallie Fahey said the last time this was discussed there was a finite amount of time to hear public testimony due to the December 5, 2018 Area Board of Zoning Appeals meeting being scheduled to start at 6:00 pm, directly after the December 5, 2018 Ordinance Committee meeting. She said at this time the board will hear any additional public comment on this issue. Sallie said that staff has not been directed to take any further action on the issue to date, but hopefully after this meeting, the board will provide some direction to staff as to how to proceed with this.

Jackson Bogan asked if there was anyone who wished to speak in favor of making the ordinance less restrictive or to keep it the same. No one came forward to speak on that position.

Jackson Bogan then asked if anyone wished to speak in favor of making the ordinance more restrictive.

Julie Peretin, 10 N. 19<sup>th</sup> Street, Lafayette, IN 47904, said she was speaking on behalf of mostly everyone in the audience, and they all were in favor of making the ordinance more restrictive. She said that 8 years ago the ordinance was revised 4 times because it was written to accommodate a specific project in the southern part of the county, which never materialized. She said she did not want that to happen again this time. Julie Peretin distributed a handout which highlighted population densities and Wind Energy Conversion Systems (WECS) Ordinances in other Indiana counties. She spoke about setback distances and parcel sizes. She said most of the counties that allowed large wind systems and wind farms were very sparsely populated and mainly had large-sized parcels. She said Tippecanoe County is more heavily populated and has many small parcels mixed in with larger-sized parcels. She said because of this it would be difficult to accommodate large wind systems and wind farms because it would require broad support from land owners of all sizes. She said some of the more densely populated counties have banned all wind projects except micro WECS

and others have very restrictive setbacks. She said other counties have moratoriums on wind development while they spend months taking expert testimony and bickering about decibel levels and setback distances.

Tom Murtaugh asked Julie Peretin to point out where the Duke Energy transmission line runs along CR 800 South.

Julie Peretin said the Duke Energy transmission line is north of CR 800 S. She said due to the increasing population density of our county, parcel configuration, and the increasing size of wind turbines it is time to remove large wind systems and wind farms from the rural zones of our county. She said the people she is representing are not concerned with the micro WECS or the small wind systems. She said their concern is with the industrialization of tens of thousands of acres by outside developers with large wind systems and wind farms that are just too big.

Sallie Fahey said that the county commissioners had just approved more allowances for divisions of land in rural areas. She said all the old 10-acre tracts can now be divided in two for homesites, and farmsteads can now be sold off to non-farm families. She said this will likely increase non-farm residences in rural areas.

Tom Murtaugh asked how Allen County has gone about not permitting WECS. He asked if they just removed wind farms from their tables or if they did it by not permitting them in certain zones.

Zach Williams said it is not an easy question to answer. He said several jurisdictions have handled this in different ways. He said some have written away the authorization for the WECS in the first place. He said others have zoning maps like Tippecanoe County and they are just not allowed in certain areas. He said he found at least one jurisdiction that prohibited WECS. He said as far as he knew there was nothing illegal or improper about doing so. Zach said he cannot give legal advice in a public meeting but based on his research he has not found anything that would prohibit a county from removing or prohibiting WECS. He said based on the public comments his recommendation would be not to remove WECS from industrial zones.

Tom Murtaugh said Tippecanoe County does not currently have any industrial zones large enough to accommodate major WECS projects. He said that would require rezoning a significant amount of ground.

Sallie Fahey said that would entail a public input process and elected officials would have to discuss it. She said there may be some existing large industrial users who would be willing to allow wind turbines on their property which would not be for their own private use.

Tom Murtaugh said he thought they would only be able to accommodate micro systems or small wind farms.

Sallie Fahey said a developer may be able to consolidate multiple industrial sites into one major project. Sallie said there is a lot of railroad industrial land in the southeast part of the city which could potentially accommodate a row of wind turbines, along with other industrial tracts. She said she is not sure how likely that would be, but it is a possibility.

Jackson Bogan asked about moving the WECS to only industrial zones along with height restrictions, and whether that might eliminate the railroad situation.

Sallie Fahey thought the height restriction in industrial zones is 300-feet, but staff would check on that.

Tom Murtaugh asked what the board members thought about this issue.

Gary Schroeder said he thought the farmers made a good case that the wind turbines would be a good revenue stream for them and he did not think the county should restrict that. He also said that the wind farms would have a 50 to 75-year contract and he thought taking that much land out of future development for so long would be detrimental to growth of the county.

Greg Jones said he was a proponent of wind farms, but he felt that in Tippecanoe County the population density is a definite issue.

Carl Griffin said the board had a responsibility to respond to public outcry about the negative impacts of WECS on the quality of life. He said the board has looked at the detrimental effect on the future growth of the county. He said the board needs to look at the steps to making more restrictions on industrial wind farms. Carl said he would like to add more restrictive height limitations and setback limitations. He said he would like to see larger concentric circles for the setbacks. Carl said most of the railroad property is not very wide, so they would have to be adjacent to an industrial site or partner with the agricultural sites along side of them. He said he was not in favor of limiting WECS to industrial zones. Carl said there are industrial sites that are not that far from residential sites. He thinks that limiting them to industrial zones is not enough and he thinks there should also be restrictions for height and setbacks.

Tom Murtaugh said staff received an email in favor of making the ordinance more restrictive. He said he has received 30-40 emails in favor of making the ordinance more restrictive and only 1 in favor of making it less restrictive or leaving it as is.

Jerry Reynolds said as a representative of the city, he looks at the wind turbines at CityBus and said he was not in favor of allowing WECS in industrial zones. He said he did not want to see wind turbines that size on industrial sites such as Arconic, formerly ALCOA, or any of the industrial sites that are close to residential areas. He said he thought farmers should be allowed to have small wind systems for personal use, but he is not in favor of the large wind systems at all.

Tom Murtaugh asked if there would need to be height restrictions in the industrial zones. He said the setbacks should be tied to the height in some fashion.

Jerry Reynolds said the silos at Tate & Lyle, formerly A. E. Staley, could only be 300-feet at the time they were built.

Sallie Fahey said staff had found the height limitation in an industrial zone is 100-feet. She said there is an exception for some things that are on top of buildings and some accessory structures. She said wind turbines or WECS are not an exception. She said the height section of the ordinance which is 4-5-1 would apply to WECS in which case the limit would be 100-feet. She said she is not sure the wind energy section 4-11-11 of the ordinance is in sync with section 4-5-1. She said the board should have Zach Williams prepare a legal opinion about whether the 100-foot height limitation in industrial zones would apply to WECS located in an industrial zone. She said the other factor to consider is the airport height restrictions. Sallie said the 300-feet that Jerry Reynolds referenced with the silos may have been an FAA limitation.

Jackson Bogan asked if WECS were allowed in the industrial zones would the 100-ft height limit be at the tip of the turbine or at the motor. He also asked if there is way not to limit individuals from using wind turbines to power their homes.

Sallie Fahey said the height limit would be at the tip of the turbine. She also said that individuals who want to power their homes with wind energy would be using micro WECS and they are not part of this discussion.

Carl Griffin said the issues that have been raised are height, noise, and setbacks. He said the board should look at ways to make the ordinance more restrictive than it currently is.

Zach Williams said certain provisions of the ordinance will sometimes override other provisions. Zach said large wind farms are currently allowed by special exception in I3, OR, A, AA, and AW zones. Zach said there was discussion about possibly removing some of those special exceptions from the use table. He said that would be one way to address this. He said another way would be to look at the more technical aspects of the ordinance such as height and setbacks. He said those are the two ways the issue could be resolved.

Carl Griffin asked if it was important to the commissioners that the WECS continue to be allowed in the industrial zones for economic reasons.

Tom Murtaugh said it was not. He said he felt that a complete ban on WECS was open for discussion.

Jackson Bogan said it seemed that the direction the Ordinance Committee was heading was not to allow WECS at all. He said he would like the board members to give their opinions once more as to whether that

was how they all felt. Jackson said in his opinion only allowing them in I3 zones with height restrictions really does not allow them at all.

Tom Murtaugh said there is really no place in Tippecanoe County that can be done right now, but it could be done with a significant rezone request. He said that would require a public input process, but it would still leave open an option if someone wanted to do that.

Gary Schroeder asked about the smaller wind systems that would still be allowed.

Sallie Fahey said the micro-WECS and small wind systems would still be allowed.

Jackson Bogan asked for definitions of the two types of smaller wind systems.

Sallie Fahey said those were defined in the packet that Julie Peretin handed out.

Gary Schroeder asked if the micro-WECS would meet the needs of a school or industry if they wanted to use wind energy for their personal use.

Sallie Fahey said if the micro-WECS didn't then the small wind farm would.

Jackson Bogan asked how tall the 3 wind turbines at CityBus were.

Julie Peretin said they are considered a large wind system because they are 6-feet above the 140-foot limit. She said they went through the special exception process and all residents within 1,000 feet approved them.

Tom Murtaugh asked if the small wind system is defined by Tippecanoe County or if that was an industry wide definition.

Sallie Fahey said it was defined by Tippecanoe County, but the definition was based on industry standards.

Jackson Bogan said he did not think the board should limit the turbines to 50 kilowatts, but that the turbine height is what should be limited.

Sallie Fahey said the turbines would need to be over 140-feet tall in order to produce more than 50 kilowatts.

John Burns said the distinction between small wind systems and large wind systems was a function of height, swept area, and kilowatts.

Jackson Bogan asked whether improved technology would allow a 140-foot turbine to produce more than 50 kilowatts.

Sallie Fahey said she did not believe so.

Jackson Bogan said if the board was going to allow small wind systems, he thought they should redefine what a small wind system is.

Sallie Fahey asked Gary Schroeder if he recalled how the current definition of a small wind system had been decided. Sallie thought it was connected to how many kilowatt hours a home used.

Gary Schroeder said his home uses between 1,000-1,500 kilowatts on average per month. Gary said a 50 kilowatts rating would be per hour. He said between 25-50 homes could be powered with a small wind system of 50 kilowatts.

Sallie Fahey said a small wind system turbine will generate a fair amount of electricity.

Jackson Bogan said the board could limit large wind systems to I3 zones with height restrictions or simply not permit them at all.

Zach Williams said they are allowed by special exception in I3 zones, but the board could change that. He said they are also currently allowed by special exception in A, AA, AW, and OR.

Tom Murtaugh moved that the staff bring forth a proposed ordinance to the committee stating that large wind systems no longer be permitted in any zone. Jerry Reynolds seconded and the motion passed by unanimous voice vote.

Jackson Bogan said the proposal would be moved forward for further review and discussion at the March 6, 2019 Ordinance Committee meeting.

**CITIZEN COMMENTS:**

None

Tom Murtaugh asked for feedback on pending legislation concerning mandatory training for Commissioners, Council members, Drainage Board members, BZA members, and APC members. He was not sure what the training would entail at this point, only that it had to be approved through the state. He said it could possibly be something put together by Purdue and people could do the training themselves. Tom said his concern was that APC and BZA were largely made up of citizens who are not compensated for their time, and he thought asking them for extra commitment was something that should be considered. Tom asked that the board members reply to him privately with their feelings on the matter.

**VI. ADJOURNMENT:**

Gary Schroder moved to adjourn the meeting.

The meeting adjourned at 5:40 p.m.

Respectfully submitted,

*Diana E. Trader*

Diana Trader  
Acting Recording Secretary

Reviewed by,

*Sallie Dell Fahey*

Sallie Dell Fahey  
Executive Director