

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

DATE.....FEBRUARY 7, 2018  
TIME.....4:40PM  
PLACE.....COUNTY OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE, IN 47901

**MEMBERS PRESENT**  
Larry Leverenz  
Jackson Bogan  
Carl Griffin  
Gary Schroeder  
Gerry Keen

**MEMBERS ABSENT**  
Tom Murtaugh  
Jerry Reynolds  
Greg Jones

**STAFF PRESENT**  
Sallie Fahey  
Ryan O’Gara  
Kathy Lind  
Rabita Foley  
Zach Williams, Atty.

**OTHER APC MEMBERS PRESENT**

**OTHER ATTENDEES**  
Steve Clevenger  
Chad Spitznagle  
Bryce Patz  
Ilana Stonebraker

Chair Jackson Bogan called the meeting to order.

**I. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the January 3, 2018 Ordinance Committee meeting. Carl Griffin 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 this is the third time the Committee will be discussing the proposed bufferyard amendment. The Committee agreed on items #2, 4, 5, & 8 but asked for additional input from the Administrative Officers on items #1, 3, 6, & 7. The Administrative Officers’ recommended changes have been incorporated into the proposed amendment. Tonight, we will be discussing the items #1, #6, & #8 as numbered in the staff report.

The 150 linear feet calculation method used to count the number of standard plant units is irrelevant with the proposed new evergreen option and has been removed (4-9-3-b).

Per the Committee’s recommendation, **noise blocking structures** was discussed at the February AO’s meeting. After much discussion, the AOs decided that the term did not need to be defined.

Jackson Bogan asked if the AO has discretion to approve the evergreen species used or if a developer can just pick any evergreens from the list to use in the bufferyard.

Rabita Foley replied that a developer can choose the type of evergreen he wants to use but evergreen trees will be mandatory if this amendment is approved.

Carl Griffin asked how including the species list in the ordinance will improve the process.

Rabita Foley said the list will help developers in the county's jurisdiction because both Lafayette and West Lafayette have their own approved plant lists that will be used.

Sallie Fahey thought the Committee agreed to adopt West Lafayette's list for all six jurisdictions. The remaining five jurisdictions would also change if West Lafayette's list changed.

Rabita Foley recalled discussing that but she thinks the Committee discussed hardship regarding how quickly the ordinance will be adopted.

Sallie Fahey said that is not a concern because Bryce Patz said he can change West Lafayette's list very quickly at the Board of Works.

Gerry Keen concurred.

Rabita Foley said she has not thought through that proposal but wonders if there might be issues doing that.

Gary Schroeder asked how you can update the species list without an ordinance amendment.

Sallie Fahey thinks we could reference the list's title in the ordinance.

Zach Williams added that the list will be on file because it is public record. He thinks we can do some kind of reference that will track the list when it changes.

Sallie Fahey said that works for her but she knows links change and she does not want to have to change the ordinance just to change a link. She liked the idea of referencing the title of the document.

Carl Griffin asked if the County AO will have species discretion or if it will remain a suggestion if we adopt the ordinance and the reference.

Sallie Fahey said if we adopt the ordinance amendment and reference it would be the list from which to choose and there would be no AO discretion.

Carl Griffin asked what needs to be done to move this portion of the proposed amendment forward.

Sallie Fahey said staff will work with counsel to get the amendment and reference wording right.

Gerry Keen said #6 in the on-line version of the amendment is different than what was presented tonight. He thought the Committee talked about getting rid of the **noise blocking structure** height requirement and using the phrase "minimum of 8 feet" instead. He just wants to make sure the AO has flexibility with regard to height.

Sallie Fahey thought the Committee decided on an 8' opaque fence and that the dbA references were too complicated.

Rabita Foley agreed that the ordinance will state that 8' is the minimum fence height and that the actual fence height is at the discretion of the AO.

Gerry Keen suggesting making the height of the fence at the AO's discretion because the AO is the one making all the choices.

Sallie Fahey pointed out that the AO can only increase the standard but not lower it.

Gerry Keen wants to make sure the AO has the discretion to increase the height of the fence.

Larry Leverenz asked to see the bufferyard width slide again. He thinks the wording “bufferyard widths for bufferyards” seems redundant.

Rabita Foley said staff will change it to read “bufferyard widths”. She went on to say staff will be presenting the bufferyard amendment in ordinance form at the March Ordinance Committee meeting.

### **III. PROHIBITING ADDITIONAL USES IN THE FLOOD PLAIN ZONE**

Discussion regarding an amendment to the UZO’s use table that would prohibit mining within the FP zone

Kathy Lind said she is not sure who originally suggested an amendment prohibiting mining in the FP but she knows it came out of the Rogers Group special exception request for mining. Much of our staff report for that mining case argued that allowing a large stockpile of overburden within the Floodway of the FP zone was a violation of the ordinance and that we need to protect our Flood Plain and the Wabash River. The *UZO* Use Table allows mining operations in the FP districts with a special exception. Staff believes the simplest way to protect the Flood Plain from future mining operations, and to keep the overburden piles from locating in the FP in violation of the ordinance, would be to eliminate mining from the FP zone in the Permitted Use Table of the ordinance. A proposed ordinance amendment is included in the packet. She then displayed a list of all mining operations that have been approved.

Gary Schroeder asked how many of those mining operations are in the FP.

Kathy Lind replied that there is only one operation that is in the mining stage in the FP. She then displayed a slide of the Donald Welsh mining operation at the corner of CR 800 South and 100 West that was approved in 1992. She thinks people are still using the site for gravel and dirt on an “as-needed” basis. The nearest FP for this property is to the northwest. She said some people on the Committee are concerned about mining operations that have FP right now but those operations will be grandfathered if we change the ordinance.

Sallie Fahey added that the only issue for existing mining operations if the amendment is adopted is that they will not be able to expand in the FP.

Jackson Bogan thinks if an existing operation in the FP were substantially damaged it could not be rebuilt.

Sallie Fahey said the operation would have to have ceased operation for over a year with intent to abandon for that to be the case.

Kathy Lind then presented a slide of the Purdy mining operation at the corner of South 18<sup>th</sup> Street and CR 510 South that is still in operation and has FP zoning within the legal description. It appears that the mining operation is further south on the property and not in the FP. The next slide shows a mining operation in Prophetstown State Park on Swisher Road; this operation is owned by the state. There is no FP on this site. She added that four of the past special exceptions for mining were for Fairfield Lakes but currently there is no mining going on in the area.

Sallie Fahey said the Prophetstown mining operation is owned by the state and maintained by the County Parks Department.

Kathy Lind said it took staff quite a while to compile the list of mining operations and she noticed a mining operation owned by the Catholic Diocese located on Swisher Road and North 9<sup>th</sup> Street that was not included on the list. She thinks maybe that mining operation was in place before 1965 when I-65 was built.

Sallie Fahey recalls the Diocese rezoning this site to Industrial for a French manufacturing company that needed a lot of water that planned to locate here. That fell through and Vulcan decided to mine on the site. She does not remember all the details.

Carl Griffin said he is having a hard time placing the Donald Welsh operation.

Kathy Lind said that operation is located at CR 800 South and 100 West.

Carl Griffin said that means the operation is a mile west of US 231 and a mile west of SR 43 on CR 800 South.

Sallie Fahey summarized by saying there are only three active mineral extraction operations with only one having FP on the site.

Kathy Lind said she discovered this other site late this afternoon so that means there are four active mining operations.

Carl Griffin asked to see the slide of the Purdy mining site. He said a portion of this active mining operation is located in the FP. He then asked if the proposed ordinance would prohibit mining in the FP zone.

Kathy Lind pointed out that this mining operation has already received a special exception and it is her opinion that the owner can legally mine within the FP area.

Sallie Fahey clarified by saying they can mine in the FP area as long as the approved site plan shows that they planned to mine in the FP area. She thinks Mr. Purdy pulled back off the tree line but she is not sure.

Kathy Lind agreed and said staff did not pull every mining special exception site plan.

Carl Griffin asked if Mr. Purdy could expand his operations in an agricultural area.

Kathy Lind said he could get a new special exception and mine in a new agricultural area but he could not expand the operation into the FP.

Carl Griffin asked at what point the owners of the four active mining sites will be notified of the intent to change the ordinance.

Sallie Fahey said we usually do not notify people when we plan to change the text of the ordinance but we can notify these people if the Committee wants that done.

Gary Schroeder said he has different concerns but they are along the same line. It appears to him that gravel and stone are located near water courses which typically could be in FP zones. Gravel and stone operations provide needed services for our construction industries. He also thinks it is hard to find acceptable places for gravel and stone operations because of neighborhood concerns. He does not understand why we would want to restrict more places to put gravel pits that may be acceptable locations. Right now we have checks and balances in place because a special exception and public hearing are required. He thinks prohibiting mining operations in the FP puts an undue burden on the community.

Sallie Fahey said it is her opinion that protecting flood plains trumps mineral extraction. She thinks our flood plains are too important.

Ryan O'Gara pointed out that the *Comprehensive Plan* says the same thing.

Sallie Fahey agreed and added that the *Comprehensive Plan* was adopted by every legislative body in the county.

Jackson Bogan asked why the *Comprehensive Plan* makes the FP more critical than other areas.

Sallie Fahey said there are a lot of reasons. In general, sand and gravel mining is less intrusive than limestone quarrying but we cannot make a distinction between different mining operations. Sand and gravel operations are a bit less concerning than quarrying however all the companies that do mineral extraction have to scrape off the topsoil. They then have to place the topsoil someplace where they can put it back

when mining/quarrying reclamation is completed. It seems the operators always want to put the topsoil in the FP but in some cases, that creates a massive obstruction in the flood plain which has the likely outcome of creating more flooding upstream because the area where the flood water can flow through the mining site has been narrowed. She went on to say flood plains are huge recharge areas for ground water, habitats for various species in our county and throughout Indiana, archaeological sites, etc. There are sand and gravel operations that are not located in the FP and there are also sand and gravel moraines created by glacial action, especially in the southwest part of the county. The Indiana Appeals Court said flood plain regulations trump mineral extraction in a case where the statute was at odds between FP regulations and mineral extraction.

Zach Williams concurred and said the statute is worded oddly but it says that "real property can be regulated" and includes a list of what can be regulated that includes restrictions on development in areas prone to flooding. According to the statute, the APC as a body can choose to pass an ordinance that restricts development in the flood plain.

Jackson Bogan said sand and gravel mining creates a hole. He asked if a hole is in the FP wouldn't it actually be better for the flood plain by not allowing the water to back up.

Sallie Fahey said that is not the case because you are most likely creating a water-filled hole. Water is impervious just like concrete in that water does not penetrate water. However high the groundwater comes up in the hole, it is only storing the groundwater with no place for flood waters.

Jackson Bogan asked if the FP mining operations have hurt the FP or do we still have the same amount of water.

Sallie Fahey said the back-up comes from putting the overburden into stockpiles of overburden in the FP.

Gary Schroeder asked if that is something we can regulate. A stockpile in the FP is something that has to be approved.

Sallie Fahey said the stockpile is part of the operation and might be able to be regulated. That is not something staff has considered or looked at. The ordinance does in effect say that, because you cannot obstruct in the FP. That was one of the big issues for the Rogers' case and Rogers Group said they were not going to buy any non-FP land where they could put the overburden.

Larry Leverenz asked how this issue is handled in other counties.

Sallie Fahey said staff has not done that research but we in Tippecanoe County have always had FP regulations that were more protective than any other place in Indiana. Those regulations have served us well in that we have very few structures left in the flood plain when we have flooding. Since 1965, our regulations have significantly reduced the loss of property and life. We also get the added benefit of protection to make structures nonconforming because we have a flood plain zone so eventually the nonconforming structures in the FP go away. There are a lot of government people around the state who wished they had the foresight to do similar things a long time ago because it is harder to get a regulation like that these days.

Gerry Keen asked if we are talking about the 100-year flood plain zone.

Sallie Fahey explained that the FP zone matches the regulatory flood as closely as possible. Right now the regulatory flood is defined by FEMA as the flood that has a 1% chance of occurring in any year. We translate that into a 100-year flood. During the life of a 30-year mortgage you can expect a flood of that magnitude about three times from an actuarial perspective. There is some consideration that the regulatory flood may go up to a 200-year flood or a 500-year flood so there are more regulations to protect those areas because of all the floods that have occurred around the country and the huge payouts the Federal government has had to make for clean-up.

Jackson Bogan asked if the regulations are to protect the flood plain or the piggy bank of the National Flood Insurance Program.

Sallie Fahey said the National Flood Insurance Program is a way for individual property owners to purchase flood insurance that is subsidized by the Federal government. The more flooding, the larger the payout is. Coastal areas have different kinds of floods and she does not know how anyone can afford to buy a house because the flood insurance is so high. As the risks increase the costs increase. The piggy bank is part of it but hydrogeology that happens in a FP is very important. The flooding events alter the natural operation. Development that occurred in low areas and in the flood plain in the Houston area was one of the big problems from Hurricane Harvey.

Gerry Keen asked how often the Flood Insurance Rate Maps are updated.

Sallie Fahey replied that the Flood Insurance Rate Map work has now been taken over by IDNR. At one time, FEMA hired contractors to do the flood plain analysis work and engineering studies but IDNR has pretty much taken that over now.

Gerry Keen asked if the maps are updated annually.

Sallie Fahey said we get new maps periodically.

Kathy Lind added that we do get letters of map amendments (LOMA) for individual properties.

Gerry Keen wonders how often it happens that the flood plain on a specific property goes from a quarter to a half.

Sallie Fahey explained that official Flood Insurance Rate Maps come out about every ten years or so but if someone believes their property should not be classified in the FP, we and FEMA have a process that the owners can go through to prove that some of their property is not in the regulatory flood. That work causes us to change the Flood Plain Zoning Map and the LOMA changes the Flood Insurance Rate Maps.

Jackson Bogan said right now mining requires a special exception and he wonders if there is a time in the future that we may want to allow mining in a FP by special exception. He wonders if the proposed ordinance might tie our hands if we want to allow a mining operation in the FP by special exception at a later date.

Sallie Fahey thinks we should prohibit mining in the flood plain along the Wabash River if we do a partial measure. She thinks there might be other streams with FP we would consider allowing mining by special exception.

Kathy Lind thinks we should not allow mining along the Wildcat because it is part of a State Scenic Stream.

Jackson Bogan asked if the ordinance would allow us to go back if some circumstance makes us rethink the issue.

Sallie Fahey said the ordinance can be changed.

Ryan O'Gara said the *Comprehensive Plan for Tippecanoe County* does not support industrial uses in the flood plain and our zoning ordinance should support that policy. Right now that is not the case.

Jackson Bogan asked if a petitioner could ask the Ordinance Committee to convene to change the ordinance to allow a special exception for mining in the FP.

Zach Williams explained that the entire ordinance would have to be changed to do that. If this proposed ordinance amendment is approved special exceptions for mining operations in the FP will be taken off the table.

Gary Schroeder asked who has this concern and asked it to be brought to Ordinance Committee.

Sallie Fahey said Tom Murtaugh talked about it but she is not sure if he was the first one to bring it up.

Kathy Lind knows Tom Murtaugh really wanted to be here for this discussion, but he is on vacation this week.

Gary Schroeder suggested tabling this issue because there is another issue to discuss. He then pointed out that this issue did not pass the last time it was brought to Ordinance Committee.

The Committee concurred.

Jackson Bogan asked that this subject be tabled until Tom Murtaugh will be present to join the discussion.

#### **IV. MINOR REVISIONS TO THE FORM-BASED CODE & PD SECTIONS**

Discussion regarding minor adjustments to these two sections of the ordinance

Ryan O'Gara wants to table his agenda item also because the changes he presented tonight are back-burner, lo-priority stuff and he wants to re-work the amendment and bring it back for the March meeting.

#### **V. CITIZEN COMMENTS**

None

#### **VI. ADJOURNMENT:**

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

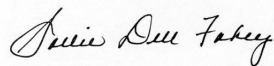
The meeting adjourned at 5:35 p.m.

Respectfully submitted,



Linda Underwood  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director