

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

DATE.....MARCH 1, 2017
TIME.....4:45PM
PLACE.....COUNTY OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE, IN 47901

MEMBERS PRESENT

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

MEMBERS ABSENT

STAFF PRESENT

Sallie Fahey
Ryan O’Gara
Jay Seeger, Atty.

OTHER APC MEMBERS PRESENT

OTHER ATTENDEES

Bianca Zaklikowski
Wan-Ting Chiu
Craig Whitlock
Diane Damico
Ed Chosnek
Steve Clevenger

Chair Tom Murtaugh called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the February 1, 2017 Ordinance Committee meeting. Greg Jones seconded and the motion passed by unanimous voice vote.

II. Airbnb

Continued discussion on transient rentals, following last month’s APC meeting where the proposed amendment was tabled

Tom Murtaugh explained that APC again sent this amendment back to this Committee for further review. Prior to this meeting he met with Kathy Lind and Alan Welch in regard to the Airbnb duplex issue. Mr. Welch is out of town and Kathy Lind is sick and could not attend tonight’s meeting. He said Kathy Lind put together the following proposal and read the email she forwarded to him that reads:

“At staff meeting this morning we discussed possible changes in the Airbnb amendment that will be discussed at tomorrow’s Ordinance Committee meeting. This started with the meeting yesterday that Tom and I had with Alan Welch who has a two unit residence/Airbnb. We were thinking that the transient rentals that have a property owner living there could be considered as a home occupation with some minor tweaking of that section of the ordinance. Home occupations, as long as they meet the ordinance standards, are allowed wherever there is a residential use by-right. With a transient guest house, where no owner lives on site, it would be allowed by-right in the R3 zones but would require a special exception in the R1 and R2

zones. This would require a public hearing so that neighbors could come and make their case either for or against a particular property's use. This would also mean that we would not have spot zones of commercial districts in solidly residential areas. We could still require some sort of license from the jurisdiction for any type of Airbnb rental use. This will no doubt be further discussed at the Ordinance Committee as well as at Thursday's Administrative Officers meeting."

He opened the floor for discussion on Kathy Lind's proposal.

Jackson Bogan asked if the proposal is only referring to a duplex.

Tom Murtaugh explained that the proposal basically throws out everything that had previously been discussed and starts over. Airbnb would fall under a home-occupation if a residential unit is owner-occupied (single-family or duplex with owner living in one side).

Gerry Keen thinks the proposal really cleans things up.

Tom Murtaugh added that there are some ordinance stipulations for home occupations. Non-owner occupied Airbnbs will be allowed in the R3 zones by-right and with a special exception in the R1 and R2 zones. There will be a public hearing every time someone requests an Airbnb in R1 or R2 zones if the owner does not live on the property.

Sallie Fahey said a home is considered owner-occupied even if an owner lives in the home but rents the entire house out while they are on vacation.

Jackson Bogan asked if an owner has to get a special exception every time they want to rent the house out.

Jay Seeger explained that an owner must get the special exception before they rent the house out the first time but they do not need to get another special exception every time they want to rent the house out.

Sallie Fahey added that the special exception will allow the owners to operate a transient guest house in the R1 and R2 zones.

Gerry Keen asked if there is a time limit an owner can rent out the entire house while the owner is away on vacation. He said he was referring to professors who go on sabbatical for a year or so.

Jay Seeger said this ordinance amendment will not apply in that instance because that is considered a long-term rental.

Sallie Fahey clarified by saying that a special exception would be required if someone rents their house out for under 30 days at a time in the R1 or R2 zone and does not qualify under home occupation. This would not apply if a person only rents their house when on sabbatical or on vacation for at least 30 days.

Larry Leverenz said he is not in the business but it seems like this amendment covers everything.

Carl Griffin said he would like to hear what the audience has to say.

Craig Whitlock, 438 Sinclair Drive, West Lafayette, IN 47906, said he knows a lot of people are not in favor of Airbnb rentals but he also knows no one has talked to or reached out to him about it. It sounds like the county is moving toward allowing some people to rent out a home on a short-term basis who are not as experienced or as good as his company is at it. It sounds like the Purdue professor who is leaving town for two weeks will be allowed to rent the house. He has concerns about safety because the professor is out of town and people are staying in his/her home. His company is actively managing the property when there are short-term guests. He is an expert at short-term rentals and knows he can help because he knows what needs to be regulated. He would like to know what his company has done to cause a problem. He added that a lot of local people need short-term rentals. One of his rentals now is rented to a local family who are waiting for their house to be finished and they do not want to be stuck in a hotel for several weeks. A neighbor who has a concern about an Airbnb rental can go to the Airbnb site and click on a button to lodge their complaint. The complaint/concern is forwarded to the property owner.

Wan-Ting Chiu, 224 South 5th Street, Lafayette, IN 47905, said she is a professor of management and she teaches MBAs and college students, and does not own any property in Lafayette or West Lafayette. She has been an Airbnb co-host since 2015 and currently has 15 Airbnb listings, making her the biggest Airbnb host in the area. Airbnb is a prime subject in her class with regard to new business models. Airbnb does not own any properties but rather is a service provider for the entire world. The rental market consists of long-term rentals, short-term rentals, owner occupied rentals, non-owner occupied, etc. She thinks it is unfair to try to single out Airbnb when there are many other companies doing the same thing. Airbnb seems to be an easy target and she does not see where Couch Surfing, Room Share and Craig's List are targeted for regulation. Airbnb is different from a bed & breakfast or hotel in that Airbnb has customer service available if something happens.

Tom Murtaugh asked Wan-Ting Chiu who her co-host is.

Wan-Ting Chiu replied that she manages the Airbnb properties by applying her business knowledge. She also does the market analysis, marketing, and pricing. She added that the total revenue for the properties she co-hosts is about \$130,000 per year for Tippecanoe County.

Tom Murtaugh asked if the host is renting through Granite.

Wan-Ting Chiu said they do not go through Granite. Her partner lists on Craig's List and Airbnb. He did rent through Granite but there were a lot of problems because a lot of local people do not pay rent. There is a good rental market in this area but not a lot of people want to own a place. There are no hassles when her units are rented through Airbnb.

Tom Murtaugh asked if the properties she co-hosts are in West Lafayette.

Wan-Ting Chiu said all the properties are in Lafayette. All the properties are listed on Airbnb by the room so the owner just stays in an empty room.

Tom Murtaugh said he agrees with Wan-Ting Chiu in that we are trying to regulate Airbnb when we really are trying to craft an ordinance amendment for short-term leases. Everyone knows Airbnb does a phenomenal job but the Committee also has to be concerned about the short term leases that do not do such a great job. We have to protect the folks from people who rent their homes for short terms through people that are not as good as Airbnb.

Sallie Fahey explained that the Committee is talking about regulating short-term rentals and not just Airbnb. It does not matter if the person rents the space on their own, uses Airbnb, Craig's List, newspaper ad, etc. The only issue is a single-family dwelling being used as a short-term rental and nothing about who is doing it.

Diane Damico, 128 Blackhawk, West Lafayette, IN 47906, said she is not familiar with special exceptions.

Jay Seeger said the special exception allows certain uses in areas where they would not otherwise be allowed. They are required to file an application to use the property in that manner. That petitioner comes before the Board of Zoning Appeals (BZA) at a public hearing. The BZA reviews the application and determines whether or not the use is appropriate at that location.

Diane Damico asked how the special exception is decided.

Sallie Fahey said it is by vote of the BZA but there are tests and it is not discretionary.

Jay Seeger added that there are objective standards that are reviewed with respect to the application.

Diane Damico asked if the filing goes out to the neighbors.

Jay Seeger explained that anyone who files for a special exception has to give notice to the surrounding neighbors.

Diane Damico asked if the special exception can cover various properties.

Jay Seeger said a special exception is per location.

Diane Damico said that will be cumbersome if you are buying multiple properties.

Jay Seeger feels that is the crux of the whole issue. People are saying they want big commercial operations but do not want to pay as much.

Diane Damico asked the cost to file a special exception.

Jay Seeger replied that the filing fee for a special exception is \$500.00.

Jay Seeger said a petitioner is asking permission to put a commercial operation in a residential neighborhood that is not for the benefit of anybody else in the neighborhood. The Committee's job to look at those and set the rules that say something is appropriate and a proper use within a neighborhood. The Committee does not care about one individual but rather has to look at the community as a whole. Everyone who comes for a variance, a special exception, or a rezone is asking for permission to do something that they are not allowed to do.

Diane Damico is not sure requiring a special exception is the right way to go.

Tom Murtaugh reminded Diane Damico that the special exception requirement is for non-owner occupied rentals. The special exception process gives the public the opportunity to speak to the issue.

Carl Griffin agrees there have not been a lot of complaints because no one perceives that they are being affected by short-term rentals at this point. He wants his property rights protected; if someone wants to use their property next to his in a way that he feels might have some negative impact on the value of his property. That becomes a very specific issue to him. Diane Damico is speaking to this issue because she feels there are potential threats to her business model and she has an individual interest in that. When staff tells people there will be a public hearing on various subjects, people are invited to intend to voice their issues. Most people say they do not have an issue unless someone wants to put it in their back yard. This process is in place any time the Committee wants to do something different in "somebody's back yard". He and Gary Schroeder sit on the Board of Zoning Appeals. When someone says they live four miles away from the site in question but has objections to the request, he listens to the objections but that person has to present some really strong arguments on his vested interest. He weighs the objections of the person living next door a little heavier. People do not come from miles away to speak when someone wants to build their carport 6" closer to the property line than allowed.

Diane Damico said she has done some research and Lafayette does not have a registry of short-term or long-term rental owners like West Lafayette does. Because sometimes rental owners are LLCs with post office box addresses, Airbnb requires a physical address with up-to-date contact information. She added that a lot of people would prefer to live next to a short-term rather than a long-term rental. The Committee asked staff to send out notices to everyone who spoke in January about the upcoming APC meeting and she never received a notice. The state Airbnb ordinance has passed the House and the Senate Committee and a registration is one of the requirements. She would prefer short-term rentals be regulated locally and not by the state. She asked that everyone look at the proposed state bill before taking action on this one.

Sallie Fahey said the thought was that the short-term issue would not come back for a full-blown discussion until the April Ordinance meeting but we brought the home occupation idea to see what the Committee thought. We will then wait to see if we are prevented from writing our own ordinance by the state. We plan to notify all speakers provided we have their addresses. This idea came out of a meeting yesterday and is not an attempt to quick-write an ordinance.

Jackson Bogan said everyone needs to bear in mind that the Committee is tasked with not dampening the entrepreneurial spirit. Airbnb has been around for about three years and residential neighborhoods long before that. He thinks people purchased homes in residential neighborhood to live in the home and not have a "hotel" next to their home with a rotating door. He really likes the special exception idea because the neighbors have an opportunity to voice their opposition to having a "hotel" next door. There is also the

chance that the neighbors will be for a professional group operating a “hotel” next door because the property is better maintained than most rentals.

Larry Leverenz likes giving the public a chance to voice their opinions at the beginning, before something happens, rather than after the fact. The public has no voice if there is a registry because at that point something has already happened. He thinks this Committee must really look at protecting everyone’s interests.

Diane Damico understands what Larry Leverenz is saying but pointed out that there are several short term rentals already in the community and there have not been any problems. There are issues about regular rentals and they are not being regulated. She thinks it is unfair that APC is trying to shut down short term rentals.

Larry Leverenz said no one is trying to shut down short term rentals. The Committee is trying to come up with a way to actually make it happen but in a way that is best for everyone’s interest.

Diane Damico thinks it is unfair that special exceptions are being discussed for short term rentals and not for other rental properties. The public has no voice when the home next to them is sold and used as a rental property. She thinks they are saying at the state level that you cannot treat a short term rental any differently than you would other rentals.

Sallie Fahey believes the planning distinction is that a single-family home rented on a long-term basis is still a single-family home because somebody is living there full-time. It does not matter if it is a rental property or an owner-occupied property. A short-term rental property is being used as a business operation and not as a single-family home.

Tom Murtaugh agrees that you can have bad neighbors with a long-term rental, an owner-occupied home, and at a short-term rental.

Gary Schroeder asked Jay Seeger if the existing short-term rental operations will be grandfathered and exempt from ordinances this Committee passes.

Jay Seeger said existing operations will be grandfathered.

Gary Schroeder asked if new units will have to comply with the ordinance.

Jay Seeger said any new established uses will have to comply with the zoning ordinance.

Gary Schroeder asked if it is possible that the state could pass a rule that would make some of our rules unenforceable.

Jay Seeger explained that state law will override local law in most cases.

Carl Griffin thanked Diane Damico for sharing her points of view with the Committee.

Bianca Zaklikowski, 120 South Riverside Plaza, Chicago, IL 60606 (business office address), said she does not live in Tippecanoe County but she was a former resident and a planner for ten years who worked extensively with the BZA. She thinks a special exception is an appropriate vehicle for short-term rental approval. Those serving on the Board of Zoning Appeals are very thoughtful and consider the merits of each case. The important thing about a special exception is that conditions can be attached. The special exception process provides an extra layer of protection.

Jackson Bogan asked if a special exception goes with the property or with the property owner.

Sallie Fahey replied that a special exception goes with the property.

Jackson Bogan asked if that means the use will continue if a property is sold.

Jay Seeger said the use will continue even if the property is sold unless the use is abandoned.

Jackson Bogan said there are good and bad landlords. He said special exceptions are sometimes granted because of the people that are running the use. He asked what will happen if the use is sold to a bad or out-of-town owner who doesn't care about the property.

Sallie Fahey explained that that issue needs to be part of the decision making process. You do not know who the owner will be if the property is sold. The decision is based on whether the location is appropriate for this kind of rental no matter who is renting it. In a sense it is like a rezone because somebody might come and say they want to have a book store in a certain location but the zoning district needed for the book store would also permit a tire shop or auto repair. All the permitted by-right uses have to be considered when making the decision.

Jackson Bogan agrees but in this particular instance we are talking about a residential house in a residential neighborhood. We are looking at the integrity of the people that may be operating the rental.

Carl Griffin said the operator has very little to do with the decision he makes when casting his vote. The Board really looks at the criteria.

Larry Leverenz said there should be other safeguards like the ordinance that makes you mow your yard every so often.

Tom Murtaugh asked if concerns can be addressed through special exception conditions like only allowing the special exception while owned by the petitioner.

Sallie Fahey thinks state law would prohibit us from doing that. She then deferred the question to legal counsel.

Jay Seeger said we can probably be somewhat creative in the conditions but the more creative you are the harder the conditions become to enforce.

Ed Chosnek, 316 Ferry Street, Lafayette, IN 47901, Lafayette City Attorney, said he heard a lot of good comments and he does not want to repeat what was already said. The zoning is to protect everybody and not just a particular property owner and that means it is connecting a neighborhood to neighbors. The current ordinance states that a single-family residence is one dwelling unit. A dwelling unit is one or more rooms with cooking, living, sanitary facilities, and sleeping accommodations for the exclusive use of one family. He went on to say a family is one or more persons related by blood, marriage, or adoption and not more than two unrelated living as a single housekeeping unit. By ordinance definition, a hotel and other short-term leases are excluded from that definition of a dwelling unit. He thinks we need to ignore Airbnb because the issue is not about Airbnb. Airbnb does a good job on short-term rentals. The situation at Chatham Square is not the only thing Lafayette is looking at. The Airbnb ads for the Chatham Square properties say up to eight unrelated people can live in the homes for a night or a weekend for a party. Eight unrelated people cannot be considered a family. He agrees with requiring a special exception for a non-owner occupied short term rental in an R1 residential zone because the special exception process allows you to look at each case individually and the possible impact to the neighborhood. The special exception process will be middle ground that allows a local board to hear from neighbors and make a determination on a case-by-case basis.

Tom Murtaugh suggested tabling the issue until we see what comes out of the legislative session. Any legislation that is passed goes into effect July 1st. He asked if state law would supersede our ordinance even if it passed before the state law did.

Jay Seeger said the answer to that would depend on what the statute says.

Sallie Fahey said it is possible the state statute could repeal everything that has been adopted up to that point or it could be "from here on out no local jurisdiction can create a zoning ordinance to regulate these". We can look at what is currently written but she is not sure that would be helpful at this point.

Tom Murtaugh asked the Committee if it wants to wait until the legislature acts or have something written up for discussion at the next Ordinance Committee meeting.

The Committee decided to wait on the state legislature before continuing the discussion.

Carl Griffin asked if the ordinance would need to be tweaked to include short-term rentals as home occupations.

Jay Seeger said the ordinance would need to be tweaked more than a little but he thinks not a lot. The ordinance specifically says bed & breakfast and a tourist/boarding home are not permitted as home occupations. We will have to use some creative language to allow what we are saying and also come up with some definitions to allow it. The ordinance also does not address what he considers the "duplex situation" which is allowing an owner-occupied duplex to rent out his adjoining house for short-term rentals.

Sallie Fahey said all those things would have to be written into the home occupation section of the ordinance.

III. MICRO WIRELESS POLES:

A proposed amendment regarding locating "repeater poles" within public road rights-of-way to improve wireless data capacity

Jay Seeger said he and staff met with representatives from several of the local jurisdictions and there is now a second draft that is being reviewed for further comment. Once that comes back he will be able to bring a final version to the Committee for consideration.

Tom Murtaugh asked how Senate Bill 213 could affect this subject.

Sallie Fahey replied that we could have a similar situation as with short-term rentals.

Jay Seeger said we tried to tie things up and dance around those things as best as we can. There was a statute a couple of years ago that somewhat got to this point and now this is phase 2.

Bianca Zaklikowski, 120 South Riverside Plaza, Chicago, IL 60606, representing Mobilitie, distributed a handout that includes a copy of Senate Bill 213 and said she works for Mobilitie, a wireless infrastructure company. The company builds the wireless support structure poles that the carriers locate their equipment on. These are not traditional cell phone towers that are located in agricultural or industrial zones. The company builds smaller pieces of equipment that are either mounted on a free-standing utility pole or on an existing light pole and feed off the traditional cell phone towers to intensify the coverage. The poles will be in places where many people are using data on their phones. Wireless coverage/data is very important because a lot of people no longer have land lines. The third page of her handout explains that the small equipment can be installed on existing infrastructure and not create a lot of visual clutter. The company has determined that demand is the greatest in the rights-of-way because that is where people are located. The company has a Certificate of Territorial Authority but the company is not a registered public utility. The zoning ordinance already allows registered public utilities to locate anywhere regardless of the zoning. The certificate allows the company to locate in the right-of-way, subject to jurisdictional requirements. Many places already have ordinances in place and Tippecanoe County is well on its way. The current proposal limits the height to 35' but the lower the installation; the more units that are needed. She understands the city block logic behind the proposed 600' separation distance but coupled with the 35' height restriction, this will not allow for the proper coverage. The handout has a lot of information on the micro-poles and she is happy to answer any questions that may arise. She added that the handout also includes photo simulations of the installations. Some of the installations are in Greenwood, Westfield, and in West Lafayette by Slater Hill.

Jackson Bogan asked what height and separation is optimal.

Bianca Zaklikowski replied 150' to 200' separation distance. A 75' pole is optimal in the industrial and commercial areas where the vertical infrastructure and added height will not cause a land use problem. A 35'

height pole in the downtown areas and along 9th Street makes a little more sense. She suggested varying the height by zoning district. The true optimal separation and height are determined on a case by case basis just because of the visual obstructions in certain areas.

Sallie Fahey said none of the photos show any of the equipment vaults so she asked who the providers are and what kind of equipment vaults are used.

Bianca Zaklikowski said Mobilitie does not do vaults because they are very expensive. Vaults are only used in places like New York City where it is worth it. All Mobilitie's equipment is pole mounted.

Sallie Fahey thinks some of Mobilitie's competitors do use vaults.

Bianca Zaklikowski agreed and said that is what makes Mobilitie different because the company does not have anything on the ground. Some of the equipment in Fishers is stored in a big ugly green cabinet on the ground.

Tom Murtaugh thinks the big green cabinets on the ground make them more offensive.

Sallie Fahey concurred and said the current UZO iteration states that if a company has vault equipment it will be required to be underground if there is room in the right-of-way.

Larry Leverenz said some very tall buildings are being considered for West Lafayette. He asked if there is a discussion about putting something on top of those buildings and if that even can be done.

Bianca Zaklikowski answered that that can be done but that is not Mobilitie's business model. The company does not want to be at the whim of the property owner. She added that there are urban markets where Mobilitie has to do that but that would not be the case here.

Carl Griffin believes the Committee needs to think about this because in a couple of years the technology that is currently trying to serve people will change. While what we are looking at now is not too bad it does affect the visual impact of our neighborhoods. He thinks these companies are not going to need this kind of technology for their business model in a couple of years. He suggested that the Committee go carefully.

Tom Murtaugh added that it would be great to have a decommissioning plan.

Gerry Keen asked if bonding can be required with the Improvement Location Permit.

Bianca Zaklikowski said bonding is a common practice.

Jay Seeger said bonding is included in the current proposal.

Bianca Zaklikowski said Senate Bill 213 is on the horizon because it has already passed through the Indiana Senate resoundingly and piggybacks off existing legislation that says that the installation can be placed in the right-of-way. The current bill allows wireless support structures to be located within any right-of-way of any jurisdiction as long as they are 50' or under. She understands a review process and fee can be put in place but a jurisdiction cannot say they do not want these in their city. There is another provision in the bill that states a new pole can be installed at the same height or within 10' of an existing utility pole already located within 500' of the proposed installation. She thinks the bill recognizes that cell phones, whether we like them or not, are public utilities.

Gary Schroeder thinks maybe the Committee should wait to proceed and not spend any more time on this until we can get more guidance from the state. He knows power poles can look pretty messy over time but they are required and people want the power.

Tom Murtaugh asked Bianca Zaklikowski if Mobilitie bids on an entire jurisdiction.

Bianca Zaklikowski said that is not the case.

Tom Murtaugh believes that means several companies can have poles in close proximity.

Bianca Zaklikowski added that that is why separation is important. Her problem with separation is if there is an enterprising company who wants to pull permits every 200', 600', or 1000' along South Street. She has learned that the length of time a permit is valid is important.

Sallie Fahey said our ordinance will make the valid permit period very short. Our ordinance will state that a company will have to get a permit and do the work under the permit in a very compressed time.

Tom Murtaugh added that the permit fee will be appropriately fixed to discourage people from obtaining multiple permits with no intention of ever locating at the sites.

Jackson Bogan still has concerns about the big box at the base of the poles.

Bianca Zaklikowski is sure that is a valid concern because other competitors use those big boxes.

Jackson Bogan asked if the boxes are more functional.

Tom Murtaugh thinks the technology being used is different.

Bianca Zaklikowski said she really is not sure about the differences because she does not know what is in the boxes.

Tom Murtaugh asked if we can write an ordinance stating the utility cannot use the boxes on the ground if Senate Bill 213 passes.

Jay Seeger said he will have to review the bill to see what limitations we can put on it. The intent of the telecommunications industries is to structure it to maximize their output and minimize their cost.

Sallie Fahey said her big concerns are ADA issues because the boxes will take up space on sidewalks that are ADA required. She has no idea if the ADA requirements will allow us to prevent the installation of a box or whether state law would tie our hands. She does not know if someone aggrieved by the lack of accessible facilities files suit against the jurisdiction or the state if our hands are tied and a box goes in. She has a lot of concerns about the vaults.

Bianca Zaklikowski explained that the bill defines the primary equipment enclosure located with the facility as having a volume of 28 cu.ft. or less. That is a pretty good sized box.

Jackson Bogan asked if we should have something in place before the bill goes into effect in July.

Jay Seeger said that will depend on what the bill states about existing ordinances.

Jackson Bogan said we should know if the bill passes and what it says by the middle of April. He asked if we can draft and pass the ordinance prior to when the bill takes effect on July 1st.

Sallie Fahey said we can do that provided this bill is not considered an emergency measure. In an emergency measure it goes into effect the day the governor signs the bill.

Tom Murtaugh said the Committee will report back to this Committee at the April meeting.

IV. CITIZEN COMMENTS

None

V. ADJOURNMENT:

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

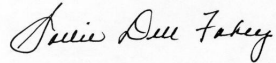
The meeting adjourned at 6:05p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director