

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY
JOINT MEETING OF THE
ORDINANCE COMMITTEE & BYLAW COMMITTEE
MINUTES OF PUBLIC MEETING**

DATE.....MAY 2, 2018
TIME.....4:45PM
PLACE.....COUNTY OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE, IN 47901

MEMBERS PRESENT

Larry Leverenz
Tom Murtaugh
Carl Griffin
Greg Jones
Jerry Reynolds
Gary Schroeder

MEMBERS ABSENT

Jackson Bogan
Gerry Keen
Dave Williams
Jake Gray

STAFF PRESENT

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

OTHER APC MEMBERS PRESENT

OTHER ATTENDEES

Steve Clevenger
Julie Peretin
Bill Miller
Chad Spitznagle

President Tom Murtaugh called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the April 4, 2018 Ordinance Committee meeting. Greg Jones seconded and the motion passed by unanimous voice vote.

II. BUFFERYARD AMENDMENT:

An update on the UZO amendment (continued at the April APC meeting to the May 16th meeting) regarding changes to both the bufferyard section and the loading berth section

Sallie Fahey said it was a good thing the bufferyard amendment was continued at the April APC meeting because there were two words missing. She referred to the page with the drawing in the proposed amendment that was distributed in the packet and said under Type A we had not added in the word deciduous between “six” and “shrubs” and under Type B we needed to add the word “evergreen” between “five” and “shrubs”. Adding those two words will make the distinction between the two bufferyard types. She thanked Steve Clevenger for catching the omissions and saving everyone a lot of extra work. Staff will review the proposed amendment again before the packet for the May 16th APC meeting is sent out. This agenda item was informational only and the Ordinance Committee does not need to take any action.

III. PROPOSED BYLAW CHANGE:

A discussion regarding how letters from interested persons received for APC rezone and subdivision filings are “read into the record”

Zach Williams said in the past there have been instances where we have had many letters read into the record on contested cases that repeat the same points. When that happens, he has to tell the people who actually show up and want to speak at the hearing that they should not repeat objections already raised in the letters. We also are reading letters that are the same (form letters). He has been approached by a couple of APC Commissioners who want to propose a change that would limit the reading of letters into the record on the day of the hearing and make them part of the packet that comes to the Commissioners. After discussion, the proposal is to change the letter submission deadline, let the packets go out to the public and Commissioners to see, and move that the letters be made part of the record without actually reading them at the hearing. The proposal is to keep the part of the Bylaw that says a person submitting a letter cannot speak at the meeting. He is aware that there are issues if we make this change so we are planning not to institute the change until later in the year to allow people to get accustomed to the new policy.

Kathy Lind said right now the deadline for receiving letters is noon on the day of the meeting. The proposal would change the submission date to noon on the Monday before the Wednesday meeting. Staff reports would go out in the packet on Thursday, giving the public enough time to read the staff reports and have the weekend to think about it and compose a letter. Staff would then send the letters out to the Commissioners by email that same Monday afternoon. She is concerned that not everyone will read the letters and the public attending the meeting will never get to hear the letters read. She talked about this subject with other staff members and she has a couple other ideas if the Committee is interested in hearing what they are.

Several on the Committee said they were interested in hearing other ideas.

Carl Griffin said the staff reports are available on the web site. He asked if the letters would be available on the website when they are emailed to the Commissioners.

Sallie Fahey said we could post the letters on our website as a “bunch” but the public would have to get accustomed to knowing that they can get to those letters late Monday afternoon.

Carl Griffin asked if the changes to the Bylaws regarding the submission of letters in favor and opposition to be read at a public hearing could be stated at each APC and Executive meeting to help the public get accustomed to the change.

Sallie Fahey said staff can write up a piece on the policy change and hand it out at all the meetings prior to the change going into effect. The change can also be put on the APC website under “New”.

Tom Murtaugh asked if the letters can be posted under the case they are relevant to.

Sallie Fahey replied that we can link the letters to a particular case.

Zach Williams added that if we make this change it still makes sense for staff to say how many letters of support and opposition there are for each case after presenting the staff report.

Kathy Lind said information on letters received for a case will be part of staffs’ presentation as well as stating the names and addresses of the submitters.

She went on to say staff came up with the following three alternatives to what has already been presented:

1. Limit letters to one (1) typed page, 11-point font size, double spaced with 1” margins instead of the current two-page limit;
2. Eliminate form letters by stating how many letters that are substantially the same were received; and
3. Limit the number of letters read to a specific number and pass any additional letters to the Commissioners at the meeting.

The Committee eliminated option #3.

Zach Williams thinks the second option is a good one but he sees difficulty enforcing it because the letters will be changed just enough to make each one a bit different.

Larry Leverenz pointed out that the letter standards are very specific. He asked how staff limits an email.

Kathy Lind said all emails received have to be printed out to be brought to the hearing to be read.

Gary Schroeder explained that the rule regarding the standards for submitted letters came about in an effort to shorten letters. APC has addressed this issue in the past. For those that do not know, the letter standards are equivalent to a 5-minute speech.

Carl Griffin said he forgot about the previous letter shortening effort.

Sallie Fahey said staff read a out loud a lot of letters until we got to five minutes. That made it easy to quantify standard to give us five minutes of written text.

Vicki Pearl appreciates not reading the letters but she wonders how she would feel as a member of the audience to go online to check to see what the letters say.

Tom Murtaugh pointed out that speakers will not be limited as to what they can speak about because what is in the letter is irrelevant because the letter was not read.

Zach Williams said the rule that states people who submit letters will not be able to speak at the meeting will stay the same.

Vicki Pearl said she thought we were saying that people attending the meeting will not be able to speak about a subject that was in a letter online which the Commissioners have seen but citizens have not.

Tom Murtaugh said the proposed change means that every subject will be open to people who attend the meeting and want to speak.

Gary Schroeder wants to hear the whole discussion but he knows there are people in the audience who want to speak. He likes the idea of shortening the letter and knows there are not a lot of cases where a lot of letters are received. He thinks it is important to hear letters from out-of-town owners or a business that is in support or against. Right now he would like to see the letters cut down to 2.5 minutes. He wants the public to have input. He is concerned people will have other speakers read their letters into the record.

Tom Murtaugh said people can read other people's letters into the record.

Zach Williams agreed.

Gary Schroeder pointed out that speakers reading letters would be repeating what other people said and that would be okay because the speaker is just reading a letter. He knows the public will figure out a way to make sure their opinion is heard.

Vicki Pearl would like to see the letters prior to the hearing even if they are being read into the record during the meeting.

Gary Schroeder said he likes to hear public input and because a lot of people are not good public speakers they write a letter instead of speaking at the meeting.

Bill Miller, 8143 Old SR 25 North, Lafayette, IN 47905, does not mind requiring the letters to be turned in the Monday prior to the hearing so the Commissioners can see them but he wants to know his letter has been read so he still wants to hear the letters read aloud at the meeting. He agrees that there are a lot of people who do not want to speak in public but still want to express their opinion.

Gary Schroeder does not think the Committee will do both. If the letters are read at the meeting the submission deadline will probably stay the same. He asked Bill Miller what he thinks about cutting the letter down to have the author make their point more concise.

Bill Miller said he personally has no objection to making the letters shorter. He thinks the letters could be five minutes long because that is how long speakers at the meeting have to speak. He thinks most people can make their point in a one-page letter.

Carl Griffin thinks the letters submitted to be read into the record should be referred to as one-page letters. Shortening the length of the letters might force a bit of organization by requiring people who have multiple points to present to divide the load. Limiting the letters to one page should get the redundancy out of the letters.

Jerry Reynolds said Lafayette City Council does one- page, three minute letters.

Larry Leverenz pointed out that rarely are there issues with letters to be read into the record. It is the responsibility of the Commissioners to give the public their opportunity to express their opinion and views are part of the argument evidence. We need to be careful how we limit that.

Jerry Reynolds likes the one-page, three minute letter. Many times the Lafayette Council votes to hear a case again.

Gary Schroeder pointed that APC is the hearing where the issues should be aired out. When the issues are aired out at APC, everything is more concise when the case goes to the legislative body and the jurisdictional hearing is not as long. APC is the forum to take extra time when needed.

Carl Griffin thinks the points that have been made regarding reading the letters are very good. The public will not feel guaranteed that their letter has been heard by the APC Commissioners. He thinks it is a good idea to read all the letters. He does not think it should be put on staff to determine what letters are substantially the same (form letters) and what ones are not.

Zach Williams thinks an easy step to make is to post a notice stating multiple letters submitted that are the same will be treated the same as a signed petition. We can only pick and choose what letters to be read if the letters are exactly the same.

Tom Murtaugh said he does not see a need to change the submission deadline if the recommendation is to limit letters to one-page.

Sallie Fahey said the date needs to be changed if the Commissioners want to see the letters prior to the hearing.

Vicki Pearl asked if changing the submission deadline for letters helps staff in any way.

Tom Murtaugh does not think it is necessary to make staff take the time to distribute the letters prior to the hearing if the letters are going to be read into the record at the meeting.

Zach Williams concurred. Citizens can see the letters before the meeting by stopping by the APC office to see the letters or asking to see the letters prior to the hearing.

Vicki Pearl asked if staff would like to have the letter submission cut-off earlier.

Sallie Fahey said the only reason staff would need the cut-off earlier is if the Commissioners want time to look at the letters prior to the hearing.

Jerry Reynolds asked if the Committee is in agreement that the letters should be restricted to one-page.

Gary Schroeder does not think the Committee is ready to make that decision yet.

Zach Williams thinks if people want to show up to speak at a meeting with a prepared statement they should get their five minutes.

Jerry Reynolds said he was talking about limiting the length of the letters to be read to one-page.

Carl Griffin added that staff will read those letters into the record.

Steve Clevenger, 4011 Black Forest Lane, West Lafayette, IN 47906, agrees that limiting the letters to one-page is a good idea because people will have to be more concise. Longer letters lead to more duplication. He also knows staff has received identical letters and have just read one of the letters along with the names and address of the submitters. He thinks reducing the length of letters to be read into the record is a sacrifice people make for not showing up and speaking at the meeting.

Zach Williams pointed out that there is no quorum for the Bylaw Committee, but he thinks the Ordinance Committee can make a recommendation and staff can bring the change back to the next Bylaw Committee meeting.

Carl Griffin asked if we can do electronic voting.

Sallie Fahey explained that there is no requirement in the statute that the Bylaw Committee authorize a change first just like there is no requirement that the Ordinance Committee authorize anything first in the statute. We operate by having smaller groups of people weigh-in on the process before there is a major debate at the Plan Commission meeting. Staff could prepare the Bylaw amendment and put it on the agenda for the June APC meeting. We also could have another joint Ordinance and Bylaw meeting in June.

Zach Williams thinks it is a great idea to have another joint meeting and take the amendment to the June APC. He then asked staff to set the start date in the 3rd quarter of the year with a tentative September target date.

Sallie Fahey said staff will prepare a change in the letter length (one-page, 11-font, double-spaced, 1" margins).

Sallie Fahey went on to say staff wants to change the motion that is read at the start of every meeting. Right now whoever is making the motion is saying that we are entering the Comp Plan, UZO, and USO. The BZA motion adds the Bylaws, the staff report, the petitioner, and all the documents the petitioner has filed. We can start doing that right away because that does not require a change by APC.

Zach Williams said staff is requesting the change but no action is needed by the Committees.

Sallie Fahey summarized by saying staff will prepare the Bylaw amendment for the joint Ordinance and Bylaw Committee meeting in June and make sure the change is filed to meet the deadline for the June APC meeting. She thinks it will be a good idea to have a recap of the proposal under "Administrative Matters" at the APC hearing before the Commission actually votes on the Bylaw amendment. She asked the Committee to pass along the information to other APC members explaining why we are proposing this change. She does not want any APC members to be surprised when they get their packet for the June meeting.

IV. CITIZEN COMMENTS:

Bill Miller, 8143 Old SR 25 North, Lafayette, IN 47905, said he has a concern about APC and BZA filings. He does not think we have anything regarding incomplete filings. Last year someone filed on January 25th and on February 1st it was determined that the filing was incomplete. That filing stayed incomplete until October. He thinks the filer should be notified and have ten working days to complete the file or refile the case when all the filing requirements can be met. He does not think it is fair to the remonstrators because experts offering testimony have to be scheduled. A petitioner can continue a case for up to two months and another two months after that. After that time they have to withdraw or go to the next hearing. A case can be disposed of in six months. His group waited nine months before the case they were interested in was finally heard.

Carl Griffin asked for the specifics of the case Bill Miller is referring to. He also asked if this case is typical or if it might be considered a misuse of the Bylaws to get around notification issues.

Sallie Fahey said that is not the situation in the case Bill Miller is referring to. Every case has a set of filing requirements. For example, a petitioner has to present a plan of how the site might be developed in a rezone from A to R1. If that plan is not available at the time of filing it is an incomplete filing and the case does not go on the agenda. A site plan to scale is required for BZA cases and if petitioner does not have that it is an incomplete filing. In those situations, we have a whole separate procedure where we seal the file if the petitioner contests that the file is incomplete. In the case Bill Miller is referring to, the normal paperwork was complete but a whole series of additional approvals had to occur first (Drainage Board, DNR, IDEM, Corp of Engineers) and it took a long time to get those approvals. She thinks from here on out, staff would be better equipped to say to someone filing the same kind of petition that we do not want their paperwork until they have the necessary approvals and can present it with the BZA paperwork. She understands Bill Miller's frustration because staff kept saying it was an incomplete file and that means the clock on the continuances did not start. She went on to say there aren't many kinds of cases where that has to happen. Staff is diligent on all other types of cases about identifying incomplete filings so it does not go on the agenda until the filing is complete.

Gary Schroeder asked if staff accepts incomplete filings.

Sallie Fahey said we try not to accept incomplete filings but sometimes people want to get rid of what they have.

Gary Schroeder asked if staff accepts the filing fee and assigns a number even if the filing is incomplete or do we just hold the paperwork until the filing is complete.

Sallie Fahey said a case should not be assigned a number if a filing is not complete.

Gary Schroeder thinks that means that the filing fee is not accepted until the file is complete. He understands that staff may find something else is needed after accepting the filing fee and assigning a number.

Larry Leverenz is hearing things like "it should not" and "it won't happen again" but he wonders if we need a policy/rule or something to assure that this does not happen again.

Sallie Fahey does not think we do.

Zach Williams reminded the Committee that BZA is wildly different from Area Plan. BZA is more like a judge and BZA decisions trigger appeal rights. Dismissing an incomplete filing becomes an appealable decision. He is concerned that the rules governing BZA outside of our rules could prohibit us from throwing out a petition. He is worried from a filing fee perspective because just filing probably triggered enough under the statute that the BZA has to render some type of decision on the case. Not allowing a case to be heard and requiring the petitioner to pay another filing fee is problematic. This is something we can look at but if staff feels that is not necessary because of the uniqueness of that situation, he is reluctant to do that because of the nature of the BZA and its quasi-judicial implications.

Tom Murtaugh asked Sallie Fahey if she is saying APC staff will not allow the filing for another case like the Rogers Group. In hindsight, knowing what they know now, staff would not have allowed that case to be filed until they had all their ducks in a row.

Sallie Fahey said that is correct

Carl Griffin asked if that means staff would not have accepted a check for the filing fee or assigned a number to the case.

Sallie Fahey said that is also right. She explained that in those kinds of cases part of the reason for the other approvals is if they file one site plan with us and DNR or the Corps of Engineers don't approve that plan, then the filed site plan is not correct. It is better to have a petitioner go obtain the required state,

federal, and other local approvals first but it is easy to forget that in a BZA case a special exception is the very last thing you do before you get a building permit. People do not like that because they have to spend a lot of money to have the plans developed first but that is the way it is throughout most of the US. The plans are not speculative like rezone cases are. BZA cases have to be built to exactly what the BZA approved.

Gary Schroeder does think it is uncommon for people to come in with an incomplete filing and staff directs them to come back to file when the filing is complete.

Sallie Fahey agreed. She realizes the incomplete filing was a problem in the case Bill Miller is referring to because there were expert witnesses that cannot be kept on the hook forever. She said as a staff we should have been pickier up front about letting the petitioner know what they had to have in that kind of case to make a complete filing.

Kathy Lind said, in staff's defense, sometimes we do not know more items are needed until the file is prepped. In this case staff did not know there was Flood Plain on the property until the legal description was mapped. The Flood Plain on the site is what triggered IDEM, Army Corps of Engineers, and DNR approval.

Tom Murtaugh said at that point staff would have already taken a check and assigned a case number.

Kathy Lind thinks that is exactly what happened in this case.

Bill Miller said the petitioner for the case he is referring to brought in more papers a couple of months later but the case was still incomplete. He is not sure if the file was ever completed because the petitioners demanded they be heard by the BZA. He believes petitioner purposely made an incomplete filing because when the first case was not heard the Commissioners' passed an ordinance. He thinks this time the petitioners filed, even though the filing was incomplete, so the county could not take any action because the filing grandfathered the existing rules at the time of the filing. He thanked staff and the Committee for explaining a lot of things.

Vicki Pearl thinks we could put a time limit on a filing because we all know what it is like to wait for a response from DNR, IDEM, etc.

Tom Murtaugh asked Zach Williams if it is problematic for BZA to do that. He asked if it is less problematic for APC.

Zach Williams said APC and BZA are different creatures. BZA hears statutory cases and makes final rulings. He is concerned about dismissing applications simply because we do not like the filing. Paying the filing fee for a BZA cases triggers the right to a hearing. He thinks it might be better to force a petitioner to a hearing after a certain length of time.

Sallie Fahey said it is complicated for both BZA and APC cases because at least half, if not more, of the cases do not show up in the office until the afternoon of the filing deadline. In most cases we do not know until the next day what is going on with a case. We can say with certainty that all the pieces of paper required for the filing came in at the time the fee was paid and a case number was assigned but the case has not been vetted for Flood Plain, site plan detail, or commitment detail. In cases like that we might have taken the money for APC but we can say a file is incomplete and the case will not be placed on the agenda if the 30-day requirement is not met.

Gary Schroeder thanked Kathy Lind and staff for brainstorming and coming up with all the options she presented for the discussion regarding "letters to be read into the record at public hearings".

VI. ADJOURNMENT:

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

The meeting adjourned at 5:40p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director