

ROLL CALL

Harry Baumgartner, Jr.	Jerome Markley
Angie Dial	Keith Masterson
Jarrold Hahn	Mike Morrissey
Bill Horan	Tim Rohr
Richard Kolkman	John Schuhmacher
Finley Lane	

Michael Lautzenheiser, Jr., Director

The December 6, 2012 meeting of the Area Plan Commission was called to order at 7:30 p.m. by President Jerome Markley. Ten members were present for roll call. Bill Horan was absent.

APPROVAL OF MINUTES:

Jarrold Hahn made a motion to approve the minutes from the October 25, 2012 meeting. Tim Rohr seconded the motion; the motion carried 10-0. Jarrold Hahn made a motion to approve the minutes from the November 1, 2012 meeting. Mike Morrissey seconded the motion; the motion carried 10-0. John Schuhmacher made a motion to approve the minutes from the November 8, 2012 meeting. Richard Kolkman seconded the motion; the motion carried 8-0-2 with Jarrold Hahn and Mike Morrissey abstaining.

OLD ITEMS:

Violation: V 2012-009 – Adam P. & Josey D. Kahn

Michael Lautzenheiser, Jr. explained that Mr. Kahn has gotten the titles for the semi-trailers that were used as storage facilities and is going to remove those as soon as possible. He has received the privy permit from the Health Department, which due to the soil at the site is the only option available. The only issue left is the trailer that is being used as a residence. He explained that the trailer has a side door entrance with bunk beds and a wood burning stove. The board talked about having the trailer reclassified as an RV. However, in an A-1 zoning district, it could still not be considered a permanent residence. It would have to be removed within either 60 or 90 days. Therefore, in order to be in compliance, they would have to make other living arrangements.

Conditions: Letter to be sent to Kahn's to attend the next APC meeting with a copy of the ordinance page about trailers not being dwellings

Motion to Approve: Mike Morrissey

Second: Harry Baumgartner, Jr.

Vote: 9-1 (Jarrold Hahn)

NEW ITEMS:

A12-12-35 LANCASTER TWP., NW/4 05-27N-12E Northern Wells Community Schools requests approval for a development plan for the addition of entrance canopies. The property is located at 1100 E. US 224, Ossian, IN 46777 and is zoned A-1.

Dana Wanamaker, architect for project, stated that they would like to construct an entrance canopy over the existing sidewalk at the south entrance and a small entrance canopy over the north sidewalk. Michael Lautzenheiser, Jr. explained the items that were discussed at the Plat Committee and stated that they were

on the plans. Jarrod Hahn stated that there were no drainage issues because they are covering up concrete with a roof.

Conditions: None .

Motion to Approve: Jarrod Hahn

Second: Mike Morrissey

Vote: 10-0

A12-12-36 HARRISON TWP., SW/4 08-26N-12E Green Plains Bluffton, LLC requests approval for a development plan for a 105ft diameter corn silo. The property is located at 1407 E 200 S, Bluffton, IN 46714 and is zoned I-1.

Bryan Harshbarger, Briner Building, stated that in the initial plan, when the site was developed, there would be three future corn silos on the southeast side of the property. They are now requesting to construct one of the three 105ft diameter silos, which is 94ft tall. He explained that at the Plat Committee meeting it was suggested to have the other two added to the plans and they would be to the south the initial one that was requested.

Jarrod Hahn stated that the location is currently all stone and the detention pond was created with this in mind. Therefore there would be no real change in the drainage for this part of the project.

Jim Hunter, owner of the 23 acre property east of the site, stated his concerns with where the dirt will go when they construct the silo. He explained that there are some drainage issues at his location and does not want the new structure to add to the issues. He described where the tiles were smashed. He stated that his property never had drainage issues before the ethanol plant was built.

Mr. Hahn explained that there was an issue with the tile that ran to the north property, which would be at the north and east corner of the site. He believed that the tile was fixed this past spring. There was also a concern about the mound of dirt that was placed along the railroad loop and he does not think that anything has been done to correct that. He explained that he went out there about a year ago because there were concerns that the dirt mound was backing up water on Mr. Hunter's property.

Jacob Duke, Green Plains Bluffton LLC, stated that they have done everything thing that they can legally do and he disputes Mr. Hunter's complaint. He explained that any further discussions are going to have to involve IDEM and the Army Corp of Engineers. This is due to IDEM stating that it was illegal for them to remove dirt. Mr. Duke stated that Mr. Hunter's issue is totally separate from the requested development plan. There will be no dirt excavated and the structure will be constructed on pilings sitting on bedrock.

Chuck Ballor, senior environmental engineer manager for Green Plains Bluffton LLC, stated that the area has been classified as a wetland. He explained that if that area is drained then it must be replaced somewhere else in that area to the amount of four times that which was drained, which is the reason for IDEM and the Army Corp of Engineers coming in.

Conditions:

Motion to Approve: Mike Morrissey

Second: John Schuhmacher

Vote: 10-0

The board discussed a possible resolution to Mr. Hunter's drainage issue, which would be a meeting at the site between IDEM, the Army Corp of Engineers, Green Plains Bluffton, LLC, Mr. Hunter, Jarrod Hahn and Michael Lautzenheiser, Jr.

Conditions: Within 30 Days the meeting at needs to be scheduled.

Motion to Approve: Mike Morrissey

Second: John Schuhmacher

Vote: 10-0

A12-12-37 LANCASTER TWP., SW/4 22-27N-12E Rosa Bravo & Juan A Ortiz request approval for a development plan for a 64ft X 48ft pole barn. The property is located at 2185 Commerce Dr., Bluffton, IN 46714 and is zoned B-3.

Joel Hoehn, Stody and Associates, explained that the existing 64' X 48' that Juan Ortiz owns is being sold to Steve Gerber, along with the land north of El Camino. Steve Gerber is selling land east of the restaurant to Mr. Ortiz and that is where the new 64' X 48' building will be constructed. The existing building is used for storage, which is the same use that the new one is being built for. Mr. Hoehn stated that the current drainage for the site flows south through a couple of existing swales into the detention basin at the physical therapy property, which then goes into the Lowe's detention basin. The new building will have gutters and down spouts, which will be tied into a 6 inch storm drain. The drain will tie into the existing storm system for Mr. Gerber's property and go into their detention basin. He explained that the detention basin was over designed by 6,957 cubic feet of storage. The new building would require 737.28 feet of cubic storage; therefore, there is enough storage in the detention basin for this structure.

Michael Lautzenheiser, Jr and Jarrod Hahn discussed the Plat Committee's recommendations and stated that this was the best drainage option. There would need to be a drainage agreement between the two neighboring properties. The agreement is basically an ingress/egress but for water and the document would be recorded and always go with the land when it sells.

Conditions: Drainage agreement with Steve and Gayla Gerber

Motion to Approve: Jarrod Hahn

Second: Keith Masterson

Vote: 10-0

A12-12-38 LANCASTER TWP., SW/4 22-27N-12E Steve & Gayla Gerber request approval for a development plan for a 72ft X 104ft addition to an existing 64ft X 48ft pole barn. The property is located at 2275 N. Main St., Bluffton, IN 46714 and is zoned B-3.

Joel Hoehn, Stody and Associates, explained that the Gerber's would like to add on an additional 72' X 104' to the existing building that they are getting from the Ortiz property. The existing drainage flows south through a couple of existing swales into the detention basin at the physical therapy property, which then goes into the Lowe's detention basin. The downspouts on this project will be tied into storm sewer that is being added for the Ortiz building. Then it will flow into the existing detention basin on the Gerber property. This was not calculated into the detention basin and will add 1,797 cubic feet to the basin, which still leaves plenty of extra storage in the basin. The addition to the building will also be for storage only.

Michael Lautzenheiser, Jr. explained another question that came up. He stated that there is an easement on the north side of the existing building. The easement is a 20ft utility easement on the property line. Therefore, the existing building is 10ft into that easement. He stated that he was unsure if that easement is used for any purpose or if the city has vacated it.

Mr. Hoehn stated that here was a power pole at the northwest corner of the building, but there is no overhead going down through the easement. He stated that he was unsure if there was any underground.

He advised that here is a fence north of the building going down the existing property line. Therefore, it might be difficult to have an addition 10ft easement added to the north of the existing easement.

Mr. Lautzenheiser commented that part of the Interurban Park is being redesigned and he is unsure if that easement would even be necessary any more. It could be possible that the easement could be vacated through a request. He believes that the new design has the rest of the park's lot being shortened. Therefore the current easement wouldn't fit into the rest of the lots after that.

Conditions: Drainage agreement with Ortiz, LLC and an agreement with the city on a resolution to the utility easement.

Motion to Approve: Jarrod Hahn

Second: Mike Morrissey

Vote: 10-0

A12-12-39 HARRISON TWP., NW/4 09-26N-12E Metaldyne M&A Bluffton, LLC requests approval for a modification to development plan A12-10-29 for the addition of 2,750 sqft. The property is located at 131 W. Harvest Rd., Bluffton, IN 46714 and is zoned I-1.

Joel Hoehn, Stoodly and Associates, explained that this plan is a modification of the original plan. This is an addition of a 50' X 55' building addition to the initial plans, which had a 50' X 150' building addition. He stated that the drainage pattern will stay the same as the initial petition. There has been 200ft of stone added to the west of the existing road, which has been completed. Mr. Hoehn explained that with this additional building addition, the project is still under a quarter acre for the exemption.

Conditions:

Motion to Approve: Mike Morrissey

Second: Jarrod Hahn

Vote: 10-0

DISCUSSION:

Ordinance discussion – CAFO

Gene Bowyer stated that the Leas are starting to have more activity at the hog manure pond on Mr. Mang's property at the corner of 600W and 1100S. He stated that he spoke with Dennis Lasiter from IDEM and Mr. Lasiter said that the property was brought up for review on October 20th. He stated that IDEM has never issued a permit to the Leas' for a manure lagoon. Mr. Lasiter stated that they are not even finished reading over the review when Mr. Bowyer contacted him Monday or Tuesday. Mr. Bowyer explained that excavation resumed on Monday. He stated that Mr. Lautzenheiser and Mr. Hahn have visited the site since the activity has started back up. He questioned how this activity can continue with no permits issued from the APC or from IDEM. Mr. Bowyer expressed that he would like a one mile setback from Five Points School and a five mile setback between each CAFO. He stated that Five Points has been listed as a historical site on the state registry. He wants some type of protection for the community in the southern part of the county from being over populated with CAFOs.

Michael Lautzenheiser, Jr. explained the situation and the numerous calls that the office received on Monday morning about what was occurring at the site. He stated that he when out there Monday afternoon and took photos of what was going on at the time. Then Tuesday he went back out to the site due to more phone calls. He verified what was exactly occurring at the location, and as of now no manure has been added to the site. As of this time, the APC office has issued a violation letter, which states that they have 30 days to respond. Mr. Lautzenheiser was also in contact with IDEM, informing them of the activity that is being done without their permits. Now there are two governmental agencies that will do enforcement. Leas did file with IDEM for a satellite manure lagoon He further explained that they are

squaring out the edges of the pond and they are steepening the slopes, which would create a larger holding capacity for the lagoon. This is what was cited in the ordinance violation letter. Mr. Lautzenheiser then explained that the maximum fine is \$2,500.00 a day and \$3,500.00 each day after that. However, the amount of the fine is determined by judge.

Jarrold Hahn explained that the county does currently have setback of manure lagoons and satellite manure lagoons. He stated that the setbacks are the same as of a CAFO, which was passes on September 6, 2012. He advised that any part of the ordinance can be amended.

Ryan Carroll questioned if IDEM could override the county ordinance. He was curious what would occur if IDEM approves the pond as it sits, since the current location of it does violate the county rules. The board discussed the setbacks of the current location and stated that it could not be approved for a permit as it stands.

Then the board discussed the other agencies that could set regulations as far as distance between CAFOs. They talked about looking into that and reviewing other county ordinances to see if they have incorporated a setback between CAFO operations. The board asked Mr. Lautzenheiser to provide the information regarding the new regulations for manure application from the State Chemist and the setback regulations from the Board of Animal Health at the next meeting.

(The motion and vote occurred after the wind turbines were discussed)

Conditions: Michael Lautzenheiser, Jr. writes up language for setback between CAFOs and also add registered historical site to the setback table with a setback of half a mile for review at the next APC meeting.

Motion: John Schuhmacher

Second: Richard Kolkman

Vote: 7-0 (Jarrod Hahn and Mike Morrissey recused themselves early for the wind turbine discussion. Finley Lane left before the meeting was adjourned.)

Ordinance discussion – Reciprocal Setbacks

Jarrold Hahn and Mike Morrissey recused themselves from the meeting before the large WECS reciprocal setback discussion occurred, due to a discussion with the attorney for the APC.

Michael Lautzenheiser, Jr. explained that the discussion would be about reciprocal setback concern. Based off of the last hearing with Apex, it was decided that the APC would review the reciprocal setback, as far as the setback restricting a non-participating property on where a new residence could be constructed. He then explained the maps that were hanging up, which showed and described different possible scenarios of setbacks. The scenarios were done in two sections, one in Chester Township using the Apex leased land and the location map of the turbines; and the other in Nottingham Township using the land leased by Wind Capital Group, but no turbine map information because they have not filed yet so the office does not have any site plans for them. Then, with those two sections the scenarios show how the maps would look if the setback was taken from the dwelling or property line, if the setbacks only affected participating properties, and if the reciprocal setbacks were completely eliminated.

William Morris, 1373 W 1050 S, stated that if the APC is considering changes to the reciprocal setback, then they should also consider other modification to the WECS ordinance as well. He explained that the Wells County Concerned Citizens still believe that the ordinance should be repealed; and that the petition, with over 1200 signature, indicates that the community agrees. He then listed some suggested changes if the ordinance could not be entirely rescinded. He recommended that the setback distance from a non-participating residence be increased to 2000 feet and that the sound level be 40 dBA measured at a non-participating residence. Mr. Morris explained that the ordinance should assign a complaint procedure for noise and the actions that would be taken to resolve the issue, if there is a complaint from residents.

He stated that there should be a number limit associated with amount of shadow flicker that can be experienced by a non-participating residence; and specify actions that will be taken to resolve this issue if a complaint rises. He also explained that the lighting of the turbines should be the most technically advanced solutions to meet the FAA lighting requirement. Mr. Morris stated that the concerned citizens did understand that the changes would not affect the Apex wind project. He then went on to question where the 1000ft setback. He further explained that the setback has no scientific basis and stated the possibility on how it could have originated. He listed other counties that have greater setback distance from residences. DeKalb County has a 1500ft setback. Whitley County has a minimum setback of 2640ft and Noble County's residential setback is 3960ft. 2500ft setback from a residence is becoming more common in a number of areas. Mr. Morris then stated what some wind turbine manufactures say on the subject of setback distances. Vestas Wind Systems says to stay away from an operating turbine by 400 meters (1312ft) unless necessary. He explained that their proposed 2000ft setback from non-participating property lines would not necessarily solve the potential dilemma but would be a step in the right direction. This setback would also minimize sound and shadow flicker. Then Mr. Morris went on to discuss 15-05 section 6(B) in the ordinance about the removal of the turbines. He stated that the current language makes the county the party of last resort because if the owner fails to remove it, then the county will at the owner's expense. He went on to explain a rough estimate on the cost of removing an abandoned turbine. He discussed options that the developer could take to cover the cost of the turbine decommission, but stated that the only guarantee that the county would have the money is if it were put into an escrow account at the start of the project. Or the financial cost to decommission them could fall on the landowner and not burden all of the taxpayers.

Tony Fleming, worked with Noble County on their unified ordinance, stated that he has written a paper about the 1000ft setback from property lines and how it was not determined by any scientific research. He discussed the Noble County wind ordinance and the process that was used to come up with it. He explained that the wind ordinance is part of their new unified ordinance. He said that they have created a wind farm overlay and stated that if a wind farm wanted to come into their county that a rezoning application would be needed to change the area into that wind farm overlay. The process requires two public hearings one in front of the commissioners and one in front of the area plan. Mr. Fleming explained that their setbacks from non-participating property lines are $\frac{3}{4}$ of a mile, 1600ft from railroad lines, from lakes/wetland greater than one acre it is 1500ft, and it is a one mile setback from any state or federal park and city/town boundary line. Then he went on to discuss their sound and shadow flicker limits along with how they handle complaints. He also talked about how the turbine decommission was done through their ordinance. He discussed the number of people per square mile in the rural areas of Noble, Wells and Benton Counties. He then went on to explain the wind classes issued by the Department of Energy.

Ted Claghorn, 4536 E 650 S, commented on the fact that the Constitution and land owners' rights should be taken into consideration when creating an ordinance.

Lesley Gaskill, Harrison Township, questioned when Wind Capital Group was going to file and if they could come in under the current ordinance. She stated that she knew that they have already received a tax abatement. She said that she is opposed to the wind turbines coming in.

Michael Lautzenheiser, Jr. explained that there was the possibility that Wind Capital Group could file before a new ordinance was adopted. He gave an example scenario. He explained the process that an ordinance amendment has to go through and gave a rough estimate on a time table. He stated that a moratorium is the same process as an amendment. He also explained how the board worked and Indiana law is strict on the board's process. If a petition meets all of the requirements, then it is approved.

Jim Berger, Bluffton, commented on the public turn out now and stated that the board should listen to the people. He stated that the public does not want turbines in the area. He commented on how the turbines would stifle growth in Wells County.

Caroline Dennis stated that she did an internet search on Wind Capital Group and found that they are in a lawsuit in Missouri due to not wanting to pay the taxes on their assessment per turbine.

The board discussed the different possible distances for the setback from non-participants. They talked about the distance being measured from the property line rather than the dwelling. Jerome Markley talked about maybe having the option of current non-participating land owners that want to build within the reciprocal setback being able to go before the BZA to reduce the setback at no cost. They would still need to do the paper work for records, but having that as a possible option. Mr. Lautzenheiser made a comment about if the setbacks were too strict that it would not leave any developable area, which could give developers false hope, and it might be better just to say that wind farms are not a permissible use in A-1 zoning.

Conditions: Michael Lautzenheiser, Jr. writes up language for no large WECS in Wells County.

Motion: Tim Rohr

Second: Angie Dial

Vote: 7-1 (Keith Masterson)

Director's End of the Year Report

Mr. Lautzenheiser reviewed what has occurred during the past year. He explained the status of the appeal and lawsuit with Wells County Concerned Citizens about the Apex project approval and AWS's appeal. He stated that 307 permits were issued as of today, which is similar to last year's numbers. There was a small amount of growth in permits for houses. Mr. Lautzenheiser said that currently there were 36 total violations and that the Stewarts violation is going to court. The APC has had 30 total petitions, which include three CAFOs and then the Apex modification petitions. The BZA has had 35 petitions with 27 of those being variances. The Plat Committee has had 123 petitions, which is similar to previous years.

Director's 2013 Plan of Operations

Mr. Lautzenheiser stated that in general he would like to keep the operations the same. The permitting and inspection process are efficient and accurate. The inspections will occur monthly. He stated that the director's opinion will still be part of the board members packets. He also said that for record keeping the office will continue to work on digitizing the old records as well as the current petitions that come in. Mr. Lautzenheiser explained that enforcement of the ordinance will still be resolved through the violation fee. The fee is getting people's attention. He stated that for the advertisement of the petitions it's mandatory per state code that a notice be placed in two local newspapers and the best results the office has had is with the signs at the site locations. He informed the board that the office employment would stay the same except that Tracey Ulmer would go from working three days a week to two days, which was done to help cut the office budget. Mr. Lautzenheiser stated that the main goal for 2013 is to get the Comprehensive Plan completed. Then look at rewriting the ordinance to make it more concise and eliminate duplication within the document. Indiana Codes have changed and he stated that the rules and procedures for the boards may need to be updated to reflect those changes. Also with the code changes, there are some other committees that could be utilized to speed up some of the petitions. He then went on to explain each of the committees and listed some of the benefits of using them. He also stated that the director's salary for 2014 should be looked into as discussed at hiring.

Motion: Tim Rohr

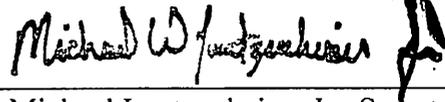
Second: John Schuhmacher

Vote: 7-0

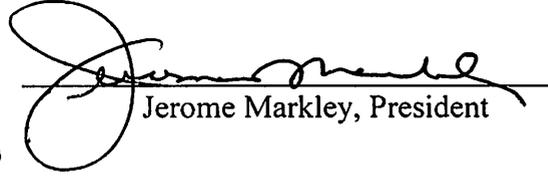
ADVISORY:

John Schuhmacher made a motion to adjourn the meeting. Richard Kolkman seconded the motion and the motion passed with a vote of 7-0. The December 6, 2012 Area Plan Commission meeting adjourned at 11:27 p.m.

ATTEST:



Michael Lautzenheiser Jr., Secretary



Jerome Markley, President