

ROLL CALL

Harry Baumgartner, Jr. Jerome Markley

Bill Horan Tim Rohr
Richard Kolkman John Schuhmacher
Jim Berger

Michael Lautzenheiser, Jr., Director

The June 17, 2013 meeting of the Area Plan Commission was called to order at 7:00 p.m. by President Jerome Markley. Seven members were present for roll call. Finley Lane, Jarrod Hahn, Keith Masterson, and Mike Morrissey were absent

APPROVAL OF MINUTES:

There were no minutes for the June 6, 2013 meeting at that time.

OLD ITEMS:

2014 Area Plan Office Budget review

Michael Lautzenheiser, Jr. explained the director’s salary will be looked at a level three which was voted on at the last meeting. He also went into detail about the line items for the office employees pay. He discussed certain line items for the office decreasing or increasing and why the change occurred.

Conditions:

Motion to recommend to Council: Bill Horan

Second: Tim Rohr

Vote: 7-0

NEW ITEMS:

A13-06-17 CHESTER TWP., LIBERTY TWP., & NOTTINGHAM TWP. Multiple locations. Wells County Wind, LLC (APEX) requests approval for a modification of petition A12-11-33 & A12-11-34 for Phase 1 & Phase 2 of a Large WECS project with 60 – 2.0MW turbines. The multiple properties are zoned A-1.

A13-06-18 CHESTER TWP., HARRISON TWP., LIBERTY TWP., & NOTTINGHAM TWP. Multiple locations. Wells County Wind II, LLC (APEX) requests approval for an amendment of petition A13-04-10 for a Large WECS project with 68 – 2.0MW turbines. The multiple properties are zoned A-1.

Bob Ehereman, attorney with Haller & Colvin in Fort Wayne and represents Apex, explained that he would like to have formal objects placed in the record and stated the reason for needing to have a formal objection in the minutes due to any appeal that may occur. He stated that on June 6th, a written objection was mailed to the APC office to both the kinds of evidence that is permissible as evidence during a development plan hearing and other issues that came up during the last public hearing. Then he stated that they object to Mr. Berger being an alternate for the APC. They sent a letter to the APC office detailing why they object and he stated that Mr. Berger has spoken out against Apex’s project at several meetings. Mr. Ehereman explained that Mr. Berger is not qualified to be an unbiased board member.

Then, Mr. Ehereman went on to state that this was not about changing the WECS ordinance and that WECS are permitted uses in A-1 zoned areas. He then commented on Indiana case law about development plans. He cited the Rieth-Riley case. He mentioned the reason for the hearing was a modification and then went on to explain that the ordinance does allow for modifications to approved development plans. He also explained that the other petition being heard is for an amendment of a filed petition and that too is allowed under section 14 in the ordinance. Mr. Ehereman brought up a letter that was submitted from Mr. Heck about article 14 and 15 of the ordinance needing to be required. He then explained his legal reasoning why that's not the case for both articles being required. He stated that specific ordinances govern over general ordinances.

Rob Propes, development manager with Apex Wind Energy, presented the board with a list of supporters for the project. He started with discussing the modification of the approved development plan, which was approved on November 8, 2012. He stated that the modifications that are being requested are a change to the turbine model from the GE 1.7MW to the Vestas V10, which is a 2MW machine. The project is also being reduced to 60 turbines. He advised that they are seeking a reciprocal setback waiver. Mr. Propes stated that the director's opinion said that all of the requirements in article 15 of the ordinance were met. He also commented on the difference between the two wind turbine models. He stated the average setbacks from non-participating homes have increased with the modification and 75% of those homes are located greater than 1600ft from a turbine. He explained that the project would still maintain the 48 dba for noise and the 30 hours or less of shadow flicker a year for all non-participating homes. He closed by saying that the modification meets the ordinance and does not alter any of the other commitments.

Mr. Propes then discussed the amendment to the Wells County Wind II project. He stated that the turbine model will be changing from the GE 1.7MW to the Vestas V10, which is a 2MW machine. The project size has been decrease to 68 turbines. He then presented a summary of the development plan. He explained that the project maintains the same commitment to sound, shadow flicker, and setbacks that were incorporated into the modified Well County Wind project. He stated that they are also seeking the same conditions. He stated that 85% of the non-participating homes are greater than 1600ft. He expressed that the Wells County Wind II project is identical to the Wells County Wind project, which was already approved.

Bill Morris stated that his comments were only directed to the Wells County Wind II petition. He explained that the application should be reject because it fails to address four requirements from article 15 of the ordinance. The first is found in 15-04(H) concerning noise at non-participating residences. Page 6, 7, & 8 of the application and the complaint process fall short the standard in the ordinance. He explained that there is no statement about sound testing at the non-participating dwelling that lodged the complaint. He stated that it sounds like the petitioner would police their own violations. He commented on how the petitioner's only solution to any problem is to offer the Participation Support Agreement. Mr. Morris then explained the second area that the application does not meet the ordinance, which is shadow flicker. He quoted from article 15-04(1) about shadow flicker. He explained that the worst case scenario should be the only case model used to consider the application, due to the lack of a specific number of hours in the ordinance. He listed the number of non-participating homes and the amount of hours of shadow flicker they would receive annually. He commented on the mitigation techniques that the petitioner offers to non-participating dwelling for shadow flicker and stated that every solution is at the inconvenience to the non-participating home owner. Next, Mr. Morris went on to discuss the software used for the data analysis and stated that the version of the program listed in the application does not even exist on the market yet, which made him question the validity of the results. He then went on to discuss the fact that the application does not address how the petitioner will handle interference with FCC regulated television and telecommunication transmissions. He then quoted from the report by Evans Engineering Solutions that was submitted with the petition, which stated that there could be some television disruption. He questioned who would pay for the solutions offered in the Evans report. Mr.

Morris concluded by stated that the Wells County Wind II application fails to meet four areas of the ordinance and therefore the petition should be denied.

Pat Hess, attorney with Beckman-Lawson in Fort Wayne, provided the board with some hand-outs and then listed the seven couples that he is representing. He cleared up some information from the April 2013 meeting and stated that when Apex tried to change its plans at the end of the meeting, is changing the evidence that was submitted, which goes against the ordinance because it was done after the public comment. He asked that if it was done again, he would like the public to be able to make comments on the changes. He stated that his clients oppose the reciprocal setback because it is a taking of property, but he explained that it is not Apex's requirement to be waived. He wanted his objection to the reciprocal setback waiver to be noted for the hearing. Mr. Hess explained that the APC must follow its own rules and ordinance. He stated that the findings of fact must be clear and definite. He disputes that section 14-05 of the ordinance about the compatibility of a development plan with the surrounding area and stated that WECS are not just limited to follow the rules in article 15. He quoted from article 15-03 and explained that the petition also has to be weighed against the standards in article 14. Mr. Hess then stated that there is language in article 15 about conflicting requirements from other ordinance articles and that same language is in article 14. It does not state in article 15 that article 14 is not applicable. He explained that article 14 is not vague and therefore the requirements would still apply. He stated that it is not the non-participating people's burden of proof, but that of Apex to explain how they comply and that they are compatible with the surrounding area. Mr. Hess then commented on a case in Fort Wayne about the issue of compatibility. He concluded by say that if article 15 was a stand-alone article, it would not have made a reference to article 14. He stated that the petition should be denied based on not meeting the ordinance requirements in article 14.

David Pence asked that the meeting be conducted orderly and stick to the issues at hand.

Orval Plumlee questioned what will occur to the value of his home due to the fact he is 3800ft away. He commented on other areas of the country where there are vacant homes near wind farms. He also questioned what will happen to the tax base. Mr. Plumlee requested that the petition be denied.

Jane Hamilton, 100 Caylor Blvd, stated that she has a farm in Chester Township. She urged the APC to follow the rules. She commented that the turbines will help the school and asked that the plans be approved.

Kari Cale, 7830 S 100 E, questioned the vague terms in the petition. She addressed her concerns on the safety of her family. She explained that there will be nine turbines within a mile of her house and eleven within a mile and a half. She commented on the fact that radio and TV signals would be interrupted and questioned how that would affect the safety of the area during storms. She also questioned what will occur to the turbine during a tornado.

Chuck Brooks commented on the revenue for Southern Wells and stated that there are too many unknowns, which should cause the board not to approve the petition.

Dean Cassiday, 2794 W 200 S, stated that he has been involved with this wind farm project pretty much since the beginning and explained that Apex has honored every commitment that they made with him. He also stated that he believes that they will honor all commitments. He asked that the board approve the changes and let Apex do the project.

Mike Mossburg, 2953 W 500 S, stated that turbines do not belong near homes. He commented about the safety during tornados as they go through wind farms. He showed a picture from May 31, 2013 tornado that went through Oklahoma. It showed a turbine blade that hit a daycare that was a quarter of a mile

away from the turbine. He explained that the other two blades from that turbine are still missing. He requests that the petition be denied for more than the reasons already stated.

Ray Shaw, 4912 S 200 E, stated that he supports alternative energy, but he does not support this project. He explained that it is due to the fact that it is in an over populated area for turbines to be in. His opposition increase with the request for larger turbines to be used. He explained that as the turbines get taller, the blades will get larger, which will increase the size of the shadow flicker. He stated that the project should be placed in a less developed area, which is why he believes that the application should be denied.

Kevin Crosby, Upland resident in Grant County, stated that he helped write the Grant County wind ordinance. He oversees the two 50KW wind turbines at Taylor University. He commented on the positive experience that they have had with the two midsize wind turbines. He explained his involvement with small vertical axis wind turbines that have been installed at three Eastbrook School buildings. He supports the project and the positive impact that it will have and asked the APC to accept the petition.

Falon French, outreach coordinator for the Hoosier Environmental Council, stated that the Council is concerned about the environmental impact of all developments. There is no way to completely minimize the impact of developments on the environment. She stated that there are risks and benefits to this project. She stated that wind power has the lowest carbon emission and lowest water impact out of any of the energy sources. She explained that it is one of the only energy sources that produce no air pollution or toxic solid waste. Ms. French stated that Apex looked at the impact that they would have on the area and did mitigation to minimize that.

Dr. Tamara Dunmoyer commented on the small wind mills at Taylor University. She stated that the debate is not whether wind energy is good or bad. She explained that the area is over developed to put the project in this area due to safety concerns. Dr. Dunmoyer urged the APC to not approve the petition due to it not meeting the ordinance and the fact that the project is not compatible with the surrounding area.

Alan Lance stated that Wells County does not want wind turbines. He commented on the complaint system for the noise and shadow flicker that Apex designed has them policing themselves, which he states is unethical.

Connie Neining, former Economic Development Director from White County, stated that she is not a paid spokesperson. She wanted the APC to hear all sides of the issue. She explained how the turbines in White County came about. She also talked about the two turbine farms in Benton County. Ms. Neining then gave the statistics about White and Benton Counties. She explained the financial benefits and the positive effect on land preservation that the wind farms have.

Mike Rowe, 1558 Wexford Ct, commented on visiting White County the beginning of the wind turbine discussion. He stated that the project is not about esthetics or the tax benefits, but it is about the compatibility with the area and the petition following the ordinance.

Shane Harris, member representative to the Indiana, Kentucky, Ohio Regional Council of Carpenters, stated that there are about 65 members that live and work in Wells County. He explained that the wind industry has helped with providing them construction jobs. He stated that they helped with building the turbines in Benton and Tipton Counties. He hopes to help on the ones in Wells County and asked the APC to approve this project.

Don Wells, 1505 W. Washington, questioned the decommissioning cost of the project. He stated that it should not be the tax payers' responsibility to pay for that cost. He advised that the decommissioning agreement should be settled prior to approval.

Kari Duke commented on the fact that renewable energy is beneficial and that the APC is responsible for the development and growth in our community. She stated that the current plan does meet the county's ordinance and that there has been no evidence about property values decreasing due to wind farms. Ms. Duke explained that wind energy is currently the best option for clean energy on a large scale.

Tamara Boucher, 165 Conifer Ct, questioned the amendment for A12-11-33 & A12-11-34 and if it was the same on that was denied in April or if it is a change. She challenges that the board would even consider amending a pending application. She stated that there are numerous reasons that have been given to deny the petitions.

Linda Sliger questioned if the County Commissioners would have approved the setback changes in the ordinance earlier when the APC recommended them, would the Wells County Wind II petition have been accepted. Ms. Sliger was informed that there were too many unknowns about the time-line to answer. She also commented on the turbines that are going to be near her property.

Leon Gaiser restated his comments that he originally told at the December 2012 meeting, which was about his 2009 trip to Canada. During the trip, he talked with people that lived near a wind farm and commented about the number of houses that were for sale. He explained that wind energy is not clean energy and that if too much electricity is produced, it cannot be stored.

Tamara Hofstetter, 4751 S 100 E, stated that she bought her property five and a half years ago and there will be five wind turbines around her property. She explained that one will be between her property and the drainage ditch. She questions who is responsible for the damages that the turbines might cause.

Kari Cale stated that the turbines are 100ft taller than the tallest building in Fort Wayne. She then commented on where the energy from the turbines would go.

Doug Klefeker stated that the board's decision was easy because the petitions don't meet the ordinance and therefore the board shouldn't make a conditional motion. He commented that the project is not compatible with the area and should be denied.

Troy Cale, 7830 S 100 E, stated that he works in transportation and commented on the fact that the wind mills in Van Wert can be seen from over 10 miles away. He explained some of the damage that occurred to the Ohio turbines during a wind storm. He stated that the petitioner should have had the community's interest first when they developed the project.

Clarence Ostrander commented on the issues with migratory birds. He stated that these would kill them by the thousands. He advised that two eagles live in the area.

Ted Claghorn, 4536 E 650 S, commented about the compatibility and about the harmonious nature between the project and the surrounding area. He then told the story about wanting to open a home business and the size of the signage, which had to be harmonious or esthetically pleasing to the area. He addressed the rezoning of Mr. Lance and further commented on the compatibility with the surrounding area of his project along with the denial of Mr. Lance's request. Mr. Claghorn stated that there were sufficient grounds to deny the petitions.

Cindy Roberts, Huntington County resident, questioned why the ordinance and project were done in secret.

Dana Boxell commented on the tax benefits and how it would not benefit the future generations that have to deal with it.

Kristen Cochran requested that the board deny the petitioners' request to waive the reciprocal setback rights. She stated that the rights of the people's safety shouldn't be taken away.

Bob Ehereman addressed the issues that were raised by Mr. Morris about Wells County Wind II. He stated that there was nothing with Wells County Wind discussed by Mr. Morris; therefore it has nothing to do with the modification. He stated that if the board looked at what Mr. Morris raised as objections to the project are not listed in the ordinance because they are part of the complaint procedure for noise and shadow flicker. Mr. Ehereman addressed the ordinance and that there is no standard for shadow flicker. He stated that Apex's plan will not exceed 30 hours annually, which meets the industrial standard. He advised that the software does meet the requirements of the ordinance. He also explained that with the non-interference with broadcasting, the standard says that if there is a written complaint then the owner/operator will take reasonable steps to minimize the complaint, which is what Apex agrees to do. Then Mr. Ehereman went on to discuss Mr. Hess' comments about the reciprocal setback waiver. He explained that Apex submitted the waiver because there were many public objections to the reciprocal setback. He stated that whether or not the setback waiver is granted, it does not affect the project. Next he addressed Mr. Hess' comments about article 14. Mr. Ehereman questioned where the ordinance defines compatibility and what the standards are. He explained that in article 15 has language about conflicting provisions. He advised that all of the standards in article 15 have been met by the petitioner. He addressed the public statements about large WECS not being compatible with an agricultural district, yet it is a permitted use in the ordinance. He then went on to cite Indiana case law. He stated that the court cases where boards have denied development plans that have met the requirements of the ordinances; the courts have said that the boards have to approve it. The courts have established the rule. Mr. Ehereman advised that the petitions meet every part of article 15 and therefore should be approved.

Rob Propes responded to the public's concern about what would happen to the turbines during severe weather. He explained that there have been no fatalities due to turbines coming apart in storms. He said that turbine damages or fires in severe storms are extremely rare occurrences, which are intensely investigated by the wind industry. Then he went on to discuss Mr. Morris' comments on sound and shadow flicker complaint process. Mr. Propes stated that Apex worked closely with Mr. Morris and his group to develop the complaint process and was surprised with his objections to it. He explained that Apex is not policing themselves in the complaint process because the complaint and resolution has to be submitted to the APC director for review to make sure it was satisfied and if any further actions need to be taken. He also address the software issue and stated that they have a contract with the company and get automatic software updates; therefore the software listed on the public website and what companies with contracts get could be different. Next, Mr. Propes discussed property values and stated that there is no analysis out there about the impact on property values post construction of a wind farm. He then commented on a property value report that was brought up at the April 2013 meeting. He refreshed the boards mind on some of the data that the report presented. He explained the participation support agreement and the compressed payment if the person chooses to sell their house within the first 10 years.

Kevin Davis, Vice President with Apex Wind, addressed the tornado that occurred in Oklahoma and the turbine damage. He read the press release from the school about the blade that hit the daycare, which was not open at the time. The release stated that the blade was already on the ground before the tornado hit and did not come off of the turbine. The school has a wind turbine engineer program and the blade was part of their training program. The school has two turbines at their location for educational purposes and they survived the storm intact.

Jim Berger commented on the preamble of the ordinance specifically about the public health and safety. He stated that he looked at article 14 and 15 of the ordinance and compared it with the petitions. He feels that Apex is not following article 14 rules and they have failed to address article 14-05(a), (b) & (c). He explained that article 14 is not vague. He advised the board that he went to Van Wert and talked with some of the residents. He was told about blasting in order to but the base of the turbine in. Mr. Propes

commented that blasting would be determined by the soil conditions, but the turbines could be moved on the parcel if it complies with the ordinance.

The board discussed the reciprocal setback waiver. They talked about the fact that the setback protects people from building too close. It could also be looked at as limiting people's rights to use their property. It was also questioned about the county or board's liability if the setback was removed. APC board's attorney, Andy Antrim, stated that if removed then the individuals that are requesting a permit can be informed of the setbacks that were originally put in to place and notify them of the removal; therefore there are ways that could be looked at when the individual goes for the permit that can be looked at to avoid liability. Mr. Lauzenheiser stated that the existing reciprocal setback rule allows an individual to go before the BZA to request a variance to go as close as 650ft.

Then Mr. Lautzenheiser explained that his thoughts on the project remain the same as what he put in his director's opinion. He stated the two ways to look at the reciprocal setback, which are the risk of building too close and the potential of partially taking the land owners' property rights. He advised that if the setback were waived that it would only affect these two petitions unless it was amended in the ordinance. Next he addressed Mr. Klefeker comment about storm drainage, which is not required due to the turbines minimal foot print.

Mr. Berger addressed his concerns about the potential for interference with broadcast signals within a few miles of a turbine. He stated that his main concern is for the protection of the people, both non-participants and participants. He then expressed his concerns about the shadow flicker and noise. He commented on the decibel level reading that the hub of the turbine. He stated that distance will make the sound lessen, but still questioned if the 1,000ft setback from a home was enough for the people's safety.

Jerome Markley stated that each petition would be voted on separately and that there would need to be six votes to make a motion pass either way.

Jim Berger made a motion to deny A13-06-17 due to the fact that article 14-05 (a), (b), and (c) were not met. Due to the lack of a second, the motion failed.

Harry Baumgartner, Jr. made a motion to deny A13-06-17, but without any specifics he withdrew his motion.

Mr. Lautzenheiser conversed with the board to try and help move the meeting along to get some of the board members thoughts on the issue. Many of the board members stated that they felt the petition meets the ordinance but it is unpopular with the majority of citizens, who they want to support. A few of the board members were still unsure on what they thought and one feels that the petitions don't meet article 14. Mr. Lautzenheiser advised the board on the Tippecanoe County case and that the board's inaction was just like making a no vote without any valid reason for the vote. He stressed the importance of coming up with an action.

Jim Berger made a motion to deny A13-06-17 due to the fact that article 14-05 (1), (2), and (3) were not met. Richard Kolkman seconded the motion. The board voted and it was 2-5, with Harry Baumgartner, Jr, Bill Horan, Jerome Markley, Tim Rohr, and John Schuhmacher opposing. The motion failed.

The board then discussed the height restriction for A-1 zoning. There were comments on if the turbines were harmonious and compatible with the surrounding area. There were questions regarding cell towers, if they were over the 100ft restriction and how that occurred. Mr. Lautzenheiser stated that they were around 198ft and previously were done through variances, but are now part of the communication tower ordinance.

Andy Antrim advised that if there is a motion to approve and no majority vote that the president of the board can keep the board here for as long as he deems necessary. He advised that if there is a motion to table and it occurs too many times there could be a court case due to rejecting for no specific reason listed, which could be appealed by the petitioners and the court will just send it back.

John Schuhmacher made a motion to approve A13-06-17 with the waiver for the reciprocal setback. Bill Horan seconded the motion. The board voted and it was 5-2, with Jim Berger and Richard Kolkman opposing. Without having 6 votes, the motion failed.

The board discussed possible conditions that could be added or removed in order to get a motion to pass. Mr. Lautzenheiser clarified that the modification is a modification to the petition that was approved in November 2012 and that the amendment was tabled in April 2013, which was not approved yet.

Jim Berger made a motion to deny A13-06-18 due to the fact that article 14-05 (1), (2), and (3) were not met. Richard Kolkman seconded the motion. The board voted and it was 2-5, with Harry Baumgartner, Jr, Bill Horan, Jerome Markley, Tim Rohr, and John Schuhmacher opposing. The motion failed.

Tim Rohr made a motion to approve A13-06-18 with the waiver for the reciprocal setback. John Schuhmacher seconded the motion. The board voted and it was 5-2, with Jim Berger and Richard Kolkman opposing. Without having 6 votes, the motion failed.

Mr. Antrim stated that there were two options according to article 4-06, which would be a vote to continue the meeting for more information to be heard or to table the meeting for a vote only and no new information.

Conditions:

Motion to Table A13-06-17 for a vote on July 3, 2013: John Schuhmacher

Second: Harry Baumgartner, Jr.

Vote: 7-0

Conditions:

Motion to Table A13-06-18 for a vote on July 3, 2013: John Schuhmacher

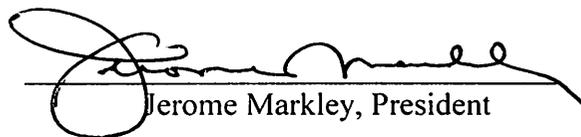
Second: Bill Horan

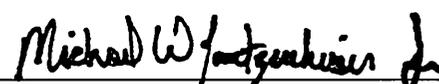
Vote: 7-0

DISCUSSION:

ADVISORY:

John Schuhmacher made a motion to adjourn the meeting. Bill Horan seconded the motion and the motion passed with a vote of 7-0. The June 17, 2013 Area Plan Commission meeting adjourned at 11:13p.m.


Jerome Markley, President

ATTEST: 
Michael Lautzenheiser Jr., Secretary