

The  
**AREA PLAN COMMISSION**  
of Tippecanoe County

**Ordinance Committee**  
**Notice of Public Hearing**

**Date: January 2, 2019**

**Time: 4:35pm**

**Place: County Office Building**

**Tippecanoe Room**

**20 North Third Street**

**Lafayette, Indiana 47901**

**AGENDA**

**I. APPROVAL OF MINUTES FOM THE NOVEMBER 7TH MEETING**

Documents:

[ORD 11.07.2018.PDF](#)

**II. APPROVAL OF MINUTES FROM THE DECEMBER 5TH MEETING:**

Documents:

[ORD 12.05.2018.PDF](#)

**III. PROPOSED CHANGES TO THE UNIFIED SUBDIVISION ORDINANCE REGARDING THE FURTHER DIVISION OF TEN ACRE TRACTS:**

A discussion to make minor changes to the amendments (USO Amendment #11 and UZO Amendment #94) that was continued from the November APC agenda to the January APC agenda - Kathy Lind

Documents:

[TEN ACRE TRACTS REVISED JANUARY 2019.PDF](#)

**IV. PROPOSED CHANGES TO THE USE TABLE REGARDING QUARRYING IN THE FLOOD PLAIN ZONE:**

A discussion to restrict certain uses from the Flood Plain zoning district - The amended UZO primary use table as discussed is attached; additional information will be distributed at the meeting - Sallie Fahey & Zach Williams

Documents:

[MINING IN FP JANUARY OC.PDF](#)

**V. ZONING ORDINANCE VIOLATION CITATIONS:**

A discussion requested by Mike Wolf, Building Commissioner, regarding adding zoning violation citations and ticketing to the zoning ordinance - Additional information will be distributed at the meeting - Sallie Fahey & Zach Williams

**VI. CITIZEN COMMENTS**

**VII. ADJOURNMENT**

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

DATE.....NOVEMBER 7, 2018  
 TIME.....4:45PM  
 PLACE.....COUNTY OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

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

**MEMBERS ABSENT****STAFF PRESENT**

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

**OTHER ATTENDEES**

Julie Peretin  
 Clark Howey  
 Pat Howey  
 Kathrine DeFreese  
 Brenda Denham  
 Ben DeFreese  
 Kasey Kirkpatrick  
 David Williams  
 Jonathon Gonzales  
 Albert Lanham  
 Lamar Sledge  
 Josh Meyer  
 Craig Allison  
 Jason Mozingo  
 Matt Vibbert  
 Britten Werner  
 Chris Shelmon  
 Adam Regich  
 Andy Gutwein  
 David Kaminski  
 Josh Francis  
 Randy Jaurigue  
 William Robinette  
 Mike Wolf  
 Chad Spitznagle

Todd Starr  
 Katya Samoteskul  
 Mike Hallkard  
 Jim Griffin  
 Patrick Cunningham  
 Bob Gross  
 Mike Devine  
 Bill Miller  
 Kay Miller  
 Gary Star  
 Betsy Blair  
 Mike Burgess  
 Phil Logan  
 Melinda S. Talbott  
 James Gregory  
 Braden Green  
 Steve Clevenger  
 Ricky Williams  
 Nick Edwards  
 Tina Brown  
 Ricky Beddow  
 Jessica Terry  
 Bailey Sulayman  
 Ryleigh Turner

Chair Jackson Bogan called the meeting to order.

## I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the October 3, 2018 Ordinance Committee meeting. Greg Jones seconded and the motion passed by unanimous voice vote.

Jackson Bogan stated that the meeting will need to end tonight by 6:25pm because some members have prior commitments. He also stated that he understands there are people here tonight that wish to speak under Citizen Comments.

## II. PROPOSED CHANGES TO THE USE TABLE REGARDING QUARRYING IN THE FLOOD PLAIN ZONE

A discussion to restrict certain uses from the Flood Plain Zoning District

Kathy Lind described the proposed change to the Permitted Use Table that was in the packet. Currently the UZO lists "SIC 14 Mining and quarrying of nonmetallic minerals, except fuels" as a category that includes many types of mining, all permitted in I3, A, AW, AA and FP by special exception. The proposed change would separate "Dimension Stone" and "Crushed & Broken Stone, including riprap" from the "Mining and quarrying of nonmetallic minerals" category and make those uses prohibited in the Flood Plain zone.

Sallie stated that in SIC Group 14, there is a clear distinction between what is quarrying and what is sand and gravel operations. What we want to keep as allowable in the Flood Plain by special exception is sand and gravel operations and exclude any kind of mining and quarrying from the FP. Last month we talked about excluding 141, but the SIC makes a broader distinction between what is mining and quarrying and what is sand and gravel mining. We want to exclude mining and quarrying no matter what the material is being mined.

Carl Griffin asked what is the rationale behind this.

Sallie Fahey replied that sand and gravel operations just dig it out of the ground. Quarrying and mining require blasting the rock for the material, which then gets dug out, and de-watering the quarry is necessary by pumping out the water to reach the next level of rock. In sand and gravel mining there is no de-watering. It is the de-watering that lowers everyone's water table, not just the quarry. There was news recently about the Town of Delphi having to build new municipal wells, and she suspects the nearby quarries may have contributed to that need.

Tom Murtaugh stated that de-watering would affect property owners downstream. He mentioned that he was a little confused by the chart. Where does sand fall in the SIC code?

Sallie Fahey replied it is in the general SIC 14 category. She stated it would be more clear if the use table listed all of the mining categories by their three digit codes not just the two-digit Sic 14.

Kathy Lind asked if sand and gravel is not considered "crushed and broken stone".

Sallie Fahey replied it is not.

Tom Murtaugh stated so basically the intent is to allow sand and gravel in the FP but nothing else would be allowed in the FP. He asked is it correct that sand and gravel is the only thing that can be mined without de-watering?

Sallie Fahey replied that that is her understanding. She ran through SIC major group 14 "Mining and quarrying of nonmetallic minerals, except fuels" and broke down the various types of mining operations listed. SIC 144, "Sand and gravel" is the only operation that does not mention boring, drilling, blasting, pumping, etc. All of the other sub-categories: 141 "Dimension stone"; 142 "Crushed and broken stone"; 145 "Clay, ceramic and refractory minerals"; 147 "Chemical and fertilizer mineral mining"; 148 "Nonmetallic minerals services, except fuels" and 149 "Miscellaneous Nonmetallic Minerals, except fuels" all include some type of mining, quarrying, drilling, pumping, etc. which we want to exclude. There is no sub-category SIC 143 or SIC 146.

Zach Williams asked if those are all the mining operations that effect the water table.

Sallie Fahey replied that is correct.

Jackson Bogan asked, just to confirm, the category 142 “crushed and broken stone,” is that not gravel?

Sallie Fahey replied no, that it is also mining and quarrying. “Sand and gravel” would be operating sand and gravel pits and dredges including washing, screening or preparing sand and gravel for construction purposes.

Larry Leverenz asked for a clarification. By the term “allow” you mean allow by special exception, and “not allow” would mean not permitted at all under any circumstance?

Sallie Fahey replied that is correct.

Jackson Bogan asked if there were any questions?

Larry Leverenz said he is assuming that if we do something like this, if there are any operations in existence now they would be grandfathered.

Sallie Fahey replied that is correct.

Larry Leverenz asked if there are any in operation right now.

Sallie responded, no there are none.

Tom Murtaugh said there are currently sand and gravel operations that have FP on their property.

Sallie said that is correct and they can continue to operate within the bounds of the special exception they were granted.

Jackson Bogan asked, so we are not hurting anyone?

Sallie Fahey replied that is correct.

Carl Griffin asked what would be the circumstances if there is a sand and gravel operation old enough that it never went through the special exception process?

Sallie Fahey responded that they would be legally nonconforming.

Carl Griffin asked If they wanted to expand would they do that via a special exception?

Sallie Fahey stated in her opinion they would be allowed to continue to mine the land they owned and were operating at the time the ordinance was adopted. They could not expand onto adjacent property without a special exception.

Zach Williams concurred.

Carl Griffin asked if the proposed use table would be redesigned to clarify by adding the additional SIC codes.

Kathy Lind stated that all of the “S”s shown on the use table would go away under the FP zone except under “sand and gravel.”

Sallie Fahey turned to the proposed text amendment. She said this was just a first draft.

Zach Williams said the text amendment is to help clarify the purpose of why we are protecting the FP zones.

Gary Schroeder asked Zach Williams if it is better to have more verbiage or less?

Zach Williams stated we just want to clarify that we want to protect the Flood Plain. That is the reason for discussing this today. The amount of verbiage isn't important; just the intent.

Tom Murtaugh asked what would be sent on to the full APC, both the chart and the text?

Zach Williams replied yes, both would be in the amendment and he stated he will clean up the intent paragraph.

Tom Murtaugh asked if the intent is to revise this and bring it back to the committee for a vote?

Sallie Fahey replied yes but not until the January meeting.

Jackson Bogan asked if there were any public comments.

Chris Shelmon, attorney, 250 Main Street, Lafayette, stated that it appears that part of the issue with this amendment is articulating the harms that are concerned. There are not any. You are not stating the actual purpose of the ordinance which is prohibiting mining outside of sand and gravel operations. If you were protecting the Flood Plain, they would be allowed to mine as they do every day in the state of Indiana with the permission of the state. If protecting the FP was the purpose, sand and gravel would also be a concern. The intent of the ordinance is difficult to articulate because there are no actual harms to the Flood Plain from the activity.

Gary Stair, 8287 Old SR 25 N, Lafayette, stated that we are in favor of what you're discussing today. Part of the mining being described involves removing the overburden which must be dealt with and is a detriment to the Flood Plain. It does effect water tables. Disturbing the overburden is a no-no. He thanked the committee.

Kay Miller, 8143 Old SR 25 N, Lafayette, stated she agreed with what the planners have said. They are concerned about the FP and the environment. The way this is written, it would protect the waterways from pollution because the equipment used in sand and gravel should be less of a threat to the environment than the heavy industrial mining equipment with the petrochemicals that are used in quarrying. Leakage from the equipment goes into the ground and disturbs the habitat and vegetation in the area which causes harm. Floodways are a valuable asset providing protection to the waterways and limiting erosion. If allowed to be polluted it can affect nearby aquifers. It seems reasonable to allow just sand and gravel to be allowed in that area.

Jackson Bogan thanked everyone.

### **III. ZONING ORDINANCE VIOLATION CITATIONS:**

A discussion requested by Mike Wolf, Building Commissioner, regarding adding zoning violation citations and ticketing to the zoning ordinance

Zach Williams, APC attorney, stated that Mike Wolf, Building Commissioner, has approached this committee in the past to put together a simple system to allow the Administrative Officer (AO) to write ticketing violations, or send a simple citation when there is a zoning ordinance violation. The reason for this is when there is an enforcement case, the AO initially tries to resolve this informally. The formal method, which involves the APC attorney, is time consuming, very costly, and very damaging to the public at large because of the fines that rack up as well as the time-consuming nature of a legal action. This proposal would be a compromise requiring a small monetary fee instead of thousands and thousands of dollars of back violations. The AO for West Lafayette would also be interested in this.

Sallie Fahey added that we would make this available to the three towns as well.

Mike Wolf, Building Commissioner, said this would be another tool they could use and would save the public's expense in the long run. His office handles on average 60 complaints a year. Usually they work

through those complaints without going to court, but they end up with 5 or 6 enforcement actions per year. Some cases have gone on for up to two years. Right now, all his staff can do is send out letters saying they are in violation. If there were an ordinance citation system in place, his staff could possibly address these violations quicker and get them resolved without going through an attorney.

Jackson Bogan asked Mike Wolf if he had reviewed the list (see attachment) and if there were any additions that should be made.

Mike Wolf said he had read the list and could not think of any additions to make.

Jackson Bogan asked if there were anything on the list that Mike Wolf felt should not be on the list.

Mike Wolf replied no.

Tom Murtaugh had a question regarding the fines on the handout.

Sallie Fahey responded the ambiguity is because the citation schedule on the handout was meant for discussion purposes.

Jackson Bogan asked if there is a warning given first.

Mike Wolf answered, yes, they contact the homeowner first. Then they send out a letter stating how much time they are giving the property owners to remedy the violation. Then they get inspected again. The violaters get 2 or 3 chances.

Jackson Bogan asked if 60 people have violations but only 55 comply, we wouldn't slap fines on all 60 correct?

Mike Wolf responded no.

Zach Williams said the procedure will have to be decided by the committee. If it is not, this becomes discretionary. There needs to be a formula set and agreed upon to follow.

Sallie Fahey pointed out that there are discussion questions on the bottom of the handout.

Carl Griffin asked what the process is for resolving these questions.

Zach stated that Mike Wolf's been working on this a long time. But Mike would like this committee to make recommendations.

Carl Griffin, asked Mike Wolf what is the current typical timeline on violations?

Mike stated that it varies on the violation and the size of the violation. Most are junkyards. When he and his staff go on the site, if there's just a car and some trash, that's easier to clean up in a week to thirty days. If it's a large junkyard with a lot of junked cars, that can take a year or two to get cleaned up even when people are cooperating. So there is a vast difference in the amount of time given them. He doesn't have a set time.

Jackson said when you say junkyard...

Sallie Fahey stated "junkyard" is a defined term.

Mike Wolf said the junkyard definition has a lot of items in there. Junkyards consume a lot of their time.

So Tom Murtaugh stated, it would be hard to put a time frame on this.

Mike Wolf replied yes, it would be. Because each job is different; people have different hardships. Sometimes the owners are not in the area.

Sallie said then there are people she would call “scofflaws” who clean up, then return to their old ways, again and again. She thinks over time when people realize we are serious about zoning enforcement we will have fewer violations because the word will go out.

Mike Wolf said that it is true that there are people who are habitual offenders.

Jackson Bogan said with that in mind, how can we put a time frame in place?

Zach Williams said you could make the fine on the first type of violation and leave a discretionary fine function up to the building commissioner on the other type. Otherwise you’d have to put in a firm date. It’s one thing to shut down an unlicensed childcare the next day, but another to clean up a large junkyard where its physically impossible to clean it up in thirty days.

Tom Murtaugh said right now Mike writes up a report. Could the report state a fine will be issued on this date...

Mike Wolf said, if in 30 days you don’t comply, this would be turned over for litigation. Remember we only act on complaints. We’re not out there searching for violations.

Sallie said what about if the citation was issued with a fee, they would have to pay that fee, then Mike or the AO would decide how long it’s likely to take to clean that up and then say here’s the amount of time we’ll give you to clean up before a second fee is levied.

Carl Griffin stated, so no warning would be given; you speed you get a ticket.

Tom Murtaugh said the problem with that is 50% of the people truly do not know they are in violation. There are a lot of people that don’t even know we have an ordinance.

Carl Griffin said, to get a driver’s license, you must pass a test. He thinks under the AO’s judgment in two to four weeks certainly written notice needs to be given. Probably 30 days on the middle two bullets. On the last bullet, he thinks allowing the AO discretion on how long it takes to reach compliance would be best.

Jackson Bogan said he likes this and also there should be a minimum clean up time. Not pointing fingers at Mike, but what if there’s a disgruntled AO in the future, and they want to levy the fine the next day, that would be impossible. Is it fair to say 30 days?

Tom Murtaugh stated what if the letter said you will have 30 days to clean up before a fine is imposed and please contact our office. If they contact the AO and say they need more than 30 days, it would be at Mike’s discretion.

Mike Wolf said that’s how we do it now.

Sallie Fahey added that some things do not require 30 days to get “cleaned up.” For example, companies with electronic signs that flash and change in violation who just push a computer button. That can be fixed the next day.

Zach said we need to be careful that we don’t disturb the over-arching enforcement process for cases that have to go to court. We need to be careful writing in a guarantee of 30 days when no one else would get that. We need to build in some type of discretion. This is like a diversion from the rigid set of strict violation rules that if taken to extreme, a judge would require a \$1500 a day fine. So this is a pull-back position; this is an alternative procedure that if you pay a fine, fix it, we won’t drag you into court. What I’m hearing is...the first citation would be an automatic letter. The question is, would there be a fine at the end of that letter if it’s not remedied within the AO’s discretion or a second citation automatically a fine no letter. Third citation and then it goes to court.

Sallie reiterated that the first citation would be an automatic letter...the second a citation letter and fine or just a fine. And third would be an increased fine.



Jackson Bogan said so if you have a major junkyard that is going to take a year to clean up, they send a letter out saying you have a year's time to clean this up otherwise a \$200 fine will be levied.

Mike Wolf said typically they start with a 30 day limit and see what the progress is. If the progress keeps moving, it's better to give them a little leeway and keep it moving. They do continue to check it out.

Jackson said so everyone agrees with a letter for the first citation. 30 days to pay the fine after the first citation?

Sallie that's pretty long.

Jackson Bogan said how about 10 days?

Sallie agreed. They already have gotten a letter and had 30 days to remedy the problem. They only need 10 days to pay the fine because they had 30 days to begin with.

And what happens if they don't pay?

Zach said he and Sallie were figuring out what a ticket would look like.

Mike Wolf said maybe only one citation would motivate people but it may take them longer than 15 days.

Sallie Fahey said we had a case in the late 70's early 80's where a guy running a junkyard went to court. The judge ordered it cleaned up in a certain amount of time and it wasn't done. He went back to court and the judge found him in contempt of court and put him in jail and told him he had to clean it up. The guy said, how can I clean it up when I'm in jail? The judge said that's your problem and this happened right here in Tippecanoe County.

Sallie stated, I'm in agreement that the focus should be on remedying it; however, at some point you can't be a nice guy anymore.

Larry Leverenz said some of these cases need to be taken care of within a day and should be. A sign blocking the view in the right-of-way should be taken care of right away. A daycare in violation should be taken care of right now.

Jackson Bogan said we're trying to determine the time frame in which to pay the dollar amount.

Larry Leverenz asked but isn't this a legal issue then? If I have a violation in my childcare center and I don't fix it in 10 days, your going to fine me. So what happens in those ten days?

Zach said that's why this is so difficult. If this goes to court, three years later you could get a judgement and many thousands of dollars in fines. Or we could use this simple citation procedure. There might not be a consensus on the best way to do this.

Tom Murtaugh asked if staff has looked at any other county?

Sallie Fahey stated we have looked at Lafayette's citation procedure. It's part of the city code and covers more than just zoning violations.

Jackson Bogan asked if staff checked other counties?

Sallie Fahey said every once in a while, this issue comes up in the planners list-serve. She said she could put all those together for you.

Jackson said getting this put together from scratch is difficult. Seeing how other jurisdictions handle it would be helpful.

Mike Wofl said he believes the health department is currently working on something similar.

Carl Griffin asked if staff, Mike Wolf, and counsel feel there are other issues that need to be discussed or if the committee needs to act as a sounding board so staff can put something together for them to tweak?

Tom Murtaugh asked where this money will be deposited.

Sallie Fahey stated she thinks a fund could be created. They talked about having a flood plain buyout fund that maybe these funds could go into?

Mike Wolf added or a demolition of unsafe structures fund?

Zach Williams stated it would be for the commissioners to decide. As to Carl's question, the violation list is good. No changes are needed there. Staff needs to bring the committee a finished product, maybe with two options. Will there be a warning or leave it up to the discretion of the AO? He thinks if we research other jurisdictions, staff will find that there's never any discretion written in. Will there be a warning letter and the final issue to be resolved is, will there be a discretionary period for payment or a set ten days and what will be done if they don't pay.

Zach Williams stated that he thinks staff and counsel and Mike will need to come up with a final product and that's what will go to APC.

We also need to include West Lafayette if Chad Spitznagle has time since they are also interested.

Gary Schroeder stated that violations on rental properties are done differently. Also most of those letters have an appeal process.

Zach Williams said that it's already built in because of the Board of Zoning Appeals.

Gary Schroeder asked who do you write the citation to if someone is renting the property? Indiana law allows them peaceful use of their property. Sometimes, as a landlord you can't enforce things on your renters. Sometimes the person leasing the property should be cited because the landlord can't enforce the ordinance. West Lafayette does that. They write the ticket to the occupant who can resolve the situation.

Chad Spitznagle, West Lafayette City Engineer's Office, stated that he agreed. There's a lot of discretionary factors that will help them in this process. They create a template for that letter and if it's something that is imminent they specifically state in that letter the violators have several days to address it or 30 days or whatever so if it is something where they are not going to sleep that night they do have the ability to address that.

Chad further stated that he agrees the appeals process would go to their own Board of Works. But invoicing of fines...would this go to the county?

Sallie Fahey stated that it would go to the city.

Chad Spitznagle stated that he liked the all-inclusive list. There may be some PD stuff that would help them that could be added to the list. But he thinks they are headed in the right direction.

Jackson asked if there were any members of the public wishing to comment on this issue. There were not.

#### **IV. CITIZEN COMMENTS:**

Patrick Cunningham, of Vester's and Robert Gross of RW Gross Surveyors, spoke regarding the amendments that would allow the further division of ten-acre tracts. Pat Cunningham stated that he, Bob Gross and Roger Fine from Fisher's met with Kathy Lind and Don Lamb regarding the proposed amendment. Banks don't like to finance ten-acre tracts. He agreed with the proposal generally but added he would like to see a change to the "farmstead parcelization." He said he would like to ensure that if a farmer razed an old farmhouse and built a newer house on the same site, that that farmer should still have the right to a "farmstead parcelization" and not be penalized because the house on site was not there in 1979.

Jackson Bogan stated that we all can agree on that.

Pat Cunningham stated their last issue was regarding ten-acre tracts. Bob, Roger and I would like to point out that a lot of farms have beautiful, wooded areas. The purpose of changing the minimum tract size to 20 acres in A, AW, and AA is to preserve farmland. Ravined, wooded areas are not used for agricultural purposes but are quite often used as residences. They believe the ordinance should continue to allow ten acre tracts in the A, Agricultural and AW, Agricultural Wooded zones, but they are in agreement with making the minimum 20 acres in the Select Agricultural zone. Pat Cunningham ended by stating, please consider these amendments to your proposed ordinance change.

Jackson Bogan asked isn't there an additional parcelization they could get?

Sallie Fahey stated yes, the proposal would allow up to four parcels per parent tract.

Kathy Lind clarified that right now the proposal is to make 20 acres the smallest size tract you could create in A, AW, and AA zones. Pat Cunningham believes that should change to allow 10 acre tracts in A and AW with only the AA zone having the 20 acre minimum. Staff could support that change to the Agricultural Wooded zone, but not in the Agricultural zone. In other words, staff could support 10 acres being the minimum in the AW zone, with 20 acres being the minimum in both A and AA zones.

Sallie concurred and explained the differences between A, AW and AA zones. She pointed out that even in the AW zone, there are tillable, farmed areas. Her problem with their proposal is that it will also effect these farmed areas. She suggested that in addition to being zoned AW, that it also be wooded.

Tom Murtaugh added or at least some percentage of it has to be wooded before they can create ten acre tracts.

Jackson Bogan asked if Pat Cunningham agrees with that change. And how would we do that.

Pat stated that they can agree with that. We already have an example with our rural estate regulations that require a percentage of wooded areas to do a rural estate.

Sallie agreed that this can be determined using aerial photography.

Gary Schroeder asked if this needs to be sent back to the ordinance committee.

Sallie Fahey replied yes, send it back to January Ordinance committee to amend the amendment. It's already been advertised and is on the APC agenda for December. We can continue this to January APC.

Gary said he felt like going from a ten to a twenty-acre minimum was a big deal. He thinks we should either do this amendment or leave it at ten acres.

Zach Williams said procedurally we need a motion to bring this as amended back to Ordinance Committee in January and for a final vote at January APC.

Carl Griffin made the motion as stated. Gerry Keen seconded.

Tom Murtaugh asked if we could notify the Bennetts, the Chitwoods and the Hardestys regarding the time change.

Sallie Fahey replied that staff can do that.

Jackson Bogan asked for the vote; it passed by unanimous voice vote. He stated that staff will come back with these revisions as discussed at the January Ordinance Committee meeting.

Jackson Bogan asked if there were any other citizen comments?

Jim Griffin, 70 W. Madison, Chicago, Illinois 60602, attorney from the law firm Shaine Banks, representing Invenergy to hopefully provide some useful information on wind energy projects. He stated that there are a number of team members here tonight, but are only asking two people to address you tonight.

Sallie Fahey interjected by telling Chairman Bogan that staff specifically told several people who called the office today that wind energy would not be discussed at this meeting.

Jackson Bogan stated that this is set as an agenda item for next month's meeting. There was a consensus at last month's meeting that it would be better for both sides to meet with staff and come back with information in December. He asked if Jim Griffin could deliver his handouts to staff, and come back for the next meeting.

Jim Griffin asked if there would be ample time for discussion at the next meeting?

Sallie stated that she suspects there will be several meetings on this topic. She just felt like this was unfair to the people staff told on the phone that this topic would not be discussed tonight.

Jackson Bogan stated that the entire December 5<sup>th</sup> meeting would be a discussion on wind farms.

Patricia Howie 7951 SR 25 S, Lafayette, also had hand-outs to distribute. Her only comment was to share her disappointment that this topic was discussed at last month's meeting which was in the middle of harvest.

## VI. ADJOURNMENT:

Gary Schroder moved to adjourn the meeting.

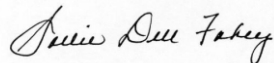
The meeting adjourned at 6:20p.m.

Respectfully submitted,



Kathy Lind  
Senior Planner

Reviewed by,



Sallie Dell Fahey  
Executive Director

## Violations Subject to Ticketing & Fines

Revised Draft 10-31-18

### Land Use Violations

- Junk yards
- Child Care Home
- Child Care Center
- Home Businesses (not legal Home Occupations) such as but not limited to:
  - Lawn care
  - Vehicle repair
  - Building contractor
  - Small engine repair
- Billboard/outdoor advertising sign
- Transient guest house
- Agricultural rental hall
- Boarding kennel
- Breeding kennel
- Construction/demolition disposal site
- Buildings in FP zones
- Amusement and recreation (outdoor) SIC 7999

### Development Standard Violations

- Electronic signs/changeable copy signs changing more frequently than once per minute
- On-premise signage
- Fill in the floodplain
- Signs in public right-of-way
- Home occupation limitations
- Clear vision triangle
- Fences
- Setbacks for porches, decks and accessory buildings
- Event oriented signs

### Fee Schedule

#### Land use citations

1 <sup>st</sup> citation	\$200 ]	
2 <sup>nd</sup> citation	\$300 ]	or double the prior fine each time
3 <sup>rd</sup> citation	\$400 ]	

#### Development standard citation

1 <sup>st</sup> citation	\$100 ]	
2 <sup>nd</sup> citation	\$200 ]	or double the prior fine each time
3 <sup>rd</sup> citation	\$300 ]	

After 3 issued citations, legal action will be taken.

### Additional Discussion Items

- Should a letter or verbal notice be given prior to issuing the 1<sup>st</sup> citation?
- How many days should the property owner/operator be given to pay the fine?
- How many days should elapse without payment before another citation is issued or the first fine collected?
- If the citation fine is paid and the owner/operator begins the compliance process how long should they have to comply?

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

DATE.....DECEMBER 5, 2018  
 TIME.....4:45PM  
 PLACE.....COUNTY OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

Larry Leverenz  
 Tom Murtaugh  
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 Greg Jones  
 Jerry Reynolds  
 Gary Schroeder

**MEMBERS ABSENT**

Gerry Keen

**STAFF PRESENT**

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

**OTHER ATTENDEES**

Stephen Clevenger  
 Pat Rund  
 Don Thelen  
 Alex Russell  
 Steve Hawk  
 Craig Allison  
 Kasey Kirkpatrick  
 Edward Hetherington  
 Julie Peretin  
 Ann Bullock  
 Marc LeBlanc  
 Bill Miller  
 Christy Waterman  
 Thomas Crouse  
 Del Craig  
 Jonathon Gonzales  
 Randy Jaurigae  
 Terry Stevens  
 Katherine DeFreese  
 Loren Kershner  
 Connie Miller  
 Ricky Williams  
 Dustin Snoeberger  
 Rob DeFreese  
 David Weaver  
 Evan Zimmerman  
 Madeline Moigio  
 Mark Russell  
 Mary Deerr

Connie Harper  
 Miguel Santiago  
 Dawn Hays  
 Kathleen Riley-Beck  
 Trudy Baumgartner  
 Robert Krieg  
 Lynette Keen  
 Tim Strueh  
 Jim Pairitz  
 Jim Griffin  
 David Kaminski  
 Joel MaRous  
 Hannah Harper  
 Jane Crouse  
 Barry Bruce  
 Matt Vibbert  
 Tammy Wolf  
 Kathy Stevens  
 Bob Osborne  
 Cliff George  
 Rose Loser  
 Robert Snoeberger  
 Kent Evans  
 Clark Howey  
 Ryan Gilbert  
 Amy Worley-Peterson  
 Paige Bradley  
 Karen Vester  
 Donald Cowan

Kenny Byers  
 Nita Thelan  
 Lori Russell  
 David Shaw  
 Mark Kirby  
 David William  
 Patricia Howey  
 Barb Strueh  
 Kay Pairitz  
 Katya Samoteskul  
 Kevin McDougale  
 Michael MaRous  
 Jay Harper  
 Grace M. Craig  
 Jerrie Bruce  
 Albert Lanham  
 Tracy Wolf  
 Brenda Denham  
 LuAnn Osborne  
 Tammy George  
 David Loser  
 Cory Snoeberger  
 Ben DeFreese  
 Mike Ray  
 Gabriel Eberhardt  
 Bruno Sanchez-Ortiz  
 Shannon Kang  
 Robert Vester

Chair Jackson Bogan called the meeting to order.

## I. APPROVAL OF MINUTES

There were no minutes available from the November 7, 2018 Ordinance Committee meeting. The draft minutes from November 7, 2018 and December 5, 2018 will be sent out with the January 2<sup>nd</sup> Ordinance Committee packet.

## II. PROPOSED CHANGES TO THE UZO REGARDING WIND FARMS:

A discussion regarding amending our current UZO regulations regarding wind farms – John Burns

Jackson Bogan said staff will make a presentation and there will be a discussion among the committee members. Afterward time will be divided equally between speakers in favor of leaving the current ordinance as is or making it less restrictive (1<sup>st</sup> Group) and those in favor of making the current ordinance more restrictive (2<sup>nd</sup> Group). Jackson said the Ordinance Committee meeting will end promptly at 5:50 pm so that staff will have time to set up for the 6:00 pm Board of Zoning Appeals meeting.

Sallie Fahey wanted everyone to know that this will not be the last opportunity to speak on this subject. It will be discussed again at the February 6, 2019 Ordinance Committee meeting.

John Burns said that the wind farm ordinance was discussed at the August 2018 Ordinance Committee meeting. He said the following main topics were discussed:

1. Limiting the overall height of towers;
2. increasing setbacks from non-participating properties;
3. addressing shadow flicker;
4. changing the type of night time lighting required by the FAA;
5. addressing the sound levels of noises generated; and
6. changing the required depth of underground infrastructure/support structures associated with the wind farm.

Staff was asked to research maximum tower height as well as the setback distance from non-participating properties. Those 2 topics are what will be discussed tonight.

John presented an Excel spreadsheet showing the wind farm ordinances from other Indiana counties and a couple of nearby counties outside of Indiana. He said there are a few corrections that need to be made to the spreadsheet regarding Tipton, Noble and Marshall Counties.

The 1st column of the spreadsheet shows the Tipton County setback ratio for non-participating properties is 1.1 times the turbine height or 350 feet whichever is greater. John said that has been changed to 1,500 feet and they have taken out the 350 feet.

The 2<sup>nd</sup> column of the spreadsheet shows Tipton County's other setback requirements as 1,000 feet from an existing or occupied dwelling and 1,320 feet from a platted major SD. This has been changed to 2,640 feet to a dwelling. The 1,000 feet to a dwelling and the 1,320 feet from a platted major SD are no longer valid.

The 1<sup>st</sup> column of the spreadsheet shows Noble County has a required setback of 1,500 feet from non-participating properties. This setback to non-participating properties has been increased to 3,960 feet. There is now a maximum height for wind turbines in Noble County of 400 feet.

Marshall County has amended its wind farm ordinance to only allow small wind systems. The height of the wind turbines is now capped at 140 feet in Marshall County.

The current Tippecanoe County setback to non-participating dwellings is 1,200 feet from the base of the turbine. There is also a setback of 700 feet to the property line of a non-participating owner. This effectively limited the use of a portion of a non-participating property. It allowed for a house to be 1,200 feet from the base of a turbine, but other portions of the property might be located in the bufferyard, which would have prevented property owners from building a house in the future on that part of their acreage.

After looking at those types of ordinance standards staff developed 3 proposed ordinance amendments to discuss:

1. Create a ratio for non-participating properties based on the turbine height instead of a static dimension. When the last amendment was written in 2010, the wind turbines being constructed had a total height of approximately 300 feet. With a setback of 1,200 feet from a non-participating residence, this amounts to a ratio of 1:4. With wind turbines today approaching heights not imagined in 2010, that ratio has been greatly reduced. Currently in Benton County wind turbines are being erected with a total height of 620 feet. With our 1,200 foot setback requirement, a turbine of this size would have a setback ratio of less than 1:2. Using a ratio of 1:4, a 620 foot tall turbine would require a setback of 2,400 feet from a non-participating residence.
2. Eliminate the setback to existing non-participating dwellings and increase the setback to a non-participating property line. All ordinances researched require turbines to be set back from non-participating dwellings at least 1.1 times the overall height of the turbine. Some ordinances require setbacks much larger, such as 3,960 feet (Wabash County) and 2,640 feet (Whitley County). Neither of these counties has a wind farm existing or under development. John said the existing setback of 1,200 feet from the base of the wind turbine to an existing non-participating dwelling limits the property owner's ability to use land located in the bufferyard.
3. Adopt a maximum height cap for turbines. While none of the ordinances from Indiana had a maximum height for turbines, Kankakee County, IL caps towers at 499 feet and Will County, IL allows a height up to 500 feet. Tippecanoe County currently has no maximum height requirement. For a frame of reference, the Tippecanoe County Courthouse is 226 feet tall, The Rise (student apartment building under construction at State and Chauncey in West Lafayette) is 164 feet tall and the three turbines at Citybus on Canal Road are 154.5 feet tall.

Jackson Bogan asked for further clarification on the 3 proposed amendments.

Proposal #1 - John Burns said that creating a ratio for non-participating property setbacks based on the height of the turbines rather than a static dimension such as the current 1,200 feet to non-participating residences might be an option to consider. Turbine heights have increased substantially since the current amendment took effect in 2010. The height of the wind turbines in 2010 was approximately 300 feet. That amounted to a ratio of 1:4 for the current 1,200 feet setback.

Sallie Fahey said that amending the ordinance to a ratio such as this would eliminate the need to come back to amend for taller and taller turbines in the future.



Jackson Bogan asked if there was a standard setback distance or a setback distance that was preferred by staff other than 1,200 feet. John said there was not.

Sallie said that the staff is only reporting on the research that the Ordinance Committee had asked them to do. They are not prepared at this time to make a proposal on setback distance.

Proposal #2 - John Burns said that staff's recommendation is only to measure the setback to the property line of a non-participating property rather than measuring to both the property line and to the dwelling as the current ordinance states.

Proposal # 3 – John Burns said this is to discuss the idea of a maximum height for wind turbines.

Sallie Fahey said that there currently are no counties in Indiana that cap the height of wind turbines but there are 2 nearby counties in Illinois that do. Kankakee County, Illinois has a cap of 499 feet for wind turbines and Will County, Illinois has a cap of 500 feet for wind turbines

John Burns pointed out that Marshall County, Indiana has now amended its ordinance to require a cap of 140 feet for wind turbines and Noble County, Indiana has amended its ordinance to cap wind turbines at 400 feet.

Tom Murtaugh asked if there could be a variance on those heights. Sallie Fahey said that if they were in the zoning ordinance requirements they could be varied but if they were in the accompanying county ordinance then they could not be varied.

Jackson Bogan said that the committee would now hear speakers from the general public. Jackson Bogan said the group in favor of leaving the current ordinance the same or making it less restrictive would speak first and the group in favor of making the ordinance more restrictive would speak second. Each speaker is restricted to 5 minutes.

Sallie Fahey said there is a total of 40 minutes available for the public to speak so each group of speakers would be limited to 20 minutes.

Speaker #1 - Patricia Howey, 7951 State Road 25 South, West Point, IN 47992.

Patricia Howey stated that at the last meeting she had provided a binder of information to the staff for them to review. She said at this time she would like to discuss the economic factor of the wind farm in regard to farmers. Patricia said that in 1980 the average price for corn was \$3.74 per bushel. Today the average price for corn is \$3.75 per bushel. Farmers are getting the same price for corn today as they did in 1980 but their expenses have increased greatly. The average cost of a used tractor is now \$208,000 and the average cost of a used combine is \$260,000. She said the total cost per acre of farming 80 acres today is \$41,690 and the cost of farming 350 acres is \$130,280. Patricia feels the Ordinance Committee has a duty to allow the family farmers of the area to use their farm land in the most efficient manner possible and that includes making the best use of the land. She said using wind as energy is no different than using the sun and the rain. It is just another use of energy that farmers need to be able to farm efficiently and effectively. She asked that the committee look at the facts of the issue rather than being led by myth and emotion. She said when the issue of wind farms was discussed in 2010 the farmers did not get any wind farms and the county lost out on millions of dollars of tax revenue. She said schools also lost out on funding because of that and that out of town workers who would have come here to work and contribute to the local economy did not come. She concluded by telling the committee that they had been appointed to their positions to look at all sides of the issue and to decide what is best for the community not only a handful of people who are not the stakeholders in this issue. She then passed out a few handouts she had prepared for the committee to look at.

Speaker #2 – Jim Griffin with the law firm of Schain Banks, 70 W. Madison Street, Suite 5300, Chicago, IL 60602.

Jim Griffin said he appeared briefly before the committee at the last meeting representing Invenergy. With him tonight are some members of the Invenergy Development team. Katya Samoteskul and Marc LeBlanc a professional engineer who is an expert in product safety and design. Jim Griffin said that about 8 years ago his research, along with Invenergy's own wind turbine projects they were working on at the time, showed that wind turbine heights were in the 400 to 500 feet range at that time and that would affect the 1:4 ratio John Burns had mentioned in his presentation. Jim Griffin said the hub height at that time may have been around 300 feet but certainly not the tip of the turbine. He asked for clarification as to whether John Burns was speaking of the hub height or the height of the tip which would affect the ratio analysis. He said they would provide some information on that for the Ordinance Committee.

Jim Griffin also said his understanding of the Tippecanoe County zoning ordinance, along with almost every other ordinance he has dealt with, sets the restriction of the turbine location to a non-participating residence so that a wind turbine cannot be located within so many feet of a non-participating residence. He said that restriction does not work the other way around however. In other words, there is no restriction on building a single-family home within so many feet of an existing wind turbine. He said this is a restriction on the wind farm developer not a restriction on the non-participating property owner. He does not think the restriction prohibits a land owner from building a residence within the setback distance. Jim Griffin says he thinks the Tippecanoe County ordinance is fine the way it is, and he is not recommending any changes to the setback distance or height restrictions. There is one provision he would like the committee to look at however. He said right now under the Tippecanoe County ordinance a company has 18 months after a special exception is granted to establish the use. For many uses that may be an appropriate time frame but for a wind energy project that is a difficult time frame to meet. Jim said building a wind farm is an extensive process and the 18-month time frame is very limiting. Invenergy is recommending 36 months to apply for building permits. He feels the terminology of applying for building permits is clearer than establishing the use of the property.

Speaker #3 – Katya Samoteskul of Invenergy, LLC, 1 S. Wacker Drive, Suite 1800, Chicago, IL 60606.

Katya Samoteskul said that Invenergy has an early stage development in Tippecanoe County. She said she is not asking for the current ordinance to be any less restrictive she just wanted to comment on the staff's proposed changes and the research they had done. She presented a power point presentation and wanted to comment on the setbacks and the turbine heights as those seem to be the 2 major areas of focus. Invenergy is a large development company and has a lot of experience in wind. They have over 90 wind projects with 9 projects in Illinois, so they have a lot of experience building in the Midwest. In Tippecanoe County they have a project in an early stage development in the southwest part of the county near West Point. She said they have been working on this project for less than a year, but they have lots of support for the project. She said when the project is finished it will be between 60 to 80 turbines depending on their size and they will power about 55,000 American homes. This project is about a \$240 million investment for Invenergy. It will pay about \$2 million per year in land owner payments, about \$1 million per year in property taxes, it will take about 200 construction jobs to build it and 10 full time jobs to operate it. She said that are hoping to tap the local talent at Ivy Tech and other local schools for these positions. She said they have signed leases for over 9,000 acres and they need about 25,000 acres total for a project of this size. Katya said that most of the land owners who have signed with them so far do live in the community and are not outside land owners who

would never see the turbines. She said Invenergy applied to inter-connect to the grid about mid-2017 and they are doing all sorts of studies to better understand the area.

Katya said in terms of setbacks they noticed the ordinance was more restrictive than in other places where they have worked. She said the 750 feet setback from a non-participating property line is stringent, and the proposed setbacks that were discussed a couple of months ago would essentially prohibit wind farms anywhere in the county. She said her power point presentation showed counties that have less restrictive ordinances which do have wind farm projects and it also showed counties that have more prohibitive ordinances which do not have any wind farm projects. Katya explained that the power point presentation showed existing and proposed setbacks to non-participating property lines highlighted in red. She said that the actual area where wind turbines could be placed in relationship to the non-participating property lines was a small area. She said the next slide showed how much land would be taken out of production if just 4 of the land owners decided not to participate.

The last thing Katya wanted to discuss was turbine height. She said that back in 2009 turbine heights were about 400 feet. Indiana counties to the north of Tippecanoe built turbines that were 430 feet tall in 2009. The 800 feet turbines are built offshore and they are not likely to be built on land any time soon. She also said the best thing about bigger turbines is that you need fewer of them. She showed a slide from 2007 with 6 turbines per section that were 399 feet tall. She then showed another slide proposed for 2020 with 4 turbines per section that were 453 feet tall. The last slide was proposed for 2021-22 which showed 2 turbines per section that were 607 feet tall.

Speaker #4 – Marc LeBlanc, 7 Piety Hill Way, Nepean, Ontario, Canada K2R 1E3

Marc LeBlanc said he has been a professional engineer working in the wind industry for about 15 years. During this time, he has been helping developers design their projects. He also does consulting not just for the developers but for their investors to make sure projects are technically viable. He said he looks at risk assessments from safety considerations of wind turbines and how they affect public safety. Marc said that while turbines have increased in size over the past 10 years they have been getting safer as well. Design standards are much more stringent and tower height has not really changed that much over the last 10 years. Marc mentioned that safety risks come from 2 sources. They come from ice throw and from potential blade failures. He said that in the rare event that turbines would fail the components or ice would fall directly underneath and not really travel at a distance. He said it is even more rare for a turbine to fail while it is turning. He said that the distance from the turbine is not really the risk as much as the speed that the blade is traveling. He said that when assessing the risk of the turbines all these things need to be considered. He also said that over time the speed that the blades turn has not really increased at all because the turbines must meet noise requirements so even though the blades are longer they are traveling at a slower pace. These are all things that need to be considered. In closing, Marc also said that the current ordinance requirements are in line with industry standards. He said some of the jurisdictions they have built in have even more stringent ordinances than Tippecanoe County.

Jackson Bogan said that we would now hear the speakers who favor more restrictions on the wind farms.

Speaker #5 – Edward Hetherington, 1218 W. 925 S., Romney, IN 47981

Edward said he appreciated Katya using the phrase that the setbacks would stop production of the turbines. He said that is a very industrial term for a very industrial machine that we are allowing into the Agricultural zone. Edward asked the members of the public who are in favor of adding better protections for residents to the existing wind ordinance to stand. He thanked the staff for their work and said he was happy to see they recognized stricter setbacks and tower height restrictions as viable options for updating the current wind ordinance. Edward said updating the current wind ordinance is necessary because wind

turbine technology has changed since our wind turbine ordinances were created nearly 10 years ago. In reading the minutes from that time, he found they contained compromises toward wind developers to promote a particular project. Edward said the question now is to determine the appropriate modern ordinances for industrial wind developments suitable for our county. He said the general provisions of the Unified Zoning Ordinance provide the framework for the direction these ordinances need to take. To ignore them is to ignore the responsibility our local government has to its residents. Edward said nowhere in the general provisions of the Unified Zoning Ordinance does it state that the purpose of these ordinances is to accommodate unrestricted industrial development. One of the purposes of the ordinance as stated per 1.2 of the UZO is promoting the health, safety, convenience and general welfare of the community. How can we as a county manage industrial wind development when a developer is the only party that seems to have any real influence over the relevant ordinances? He said we must consider the impact a modern wind turbine has on the residents living nearby and how the scale of wind development is different from the industrial development our county typically enjoys. Unlike a factory or similar project which occupies several hundred acres of land and has perhaps dozens of locally affected residents, an industrial wind development sprawled across tens of thousands of acres, potentially affecting tens of thousands of people from Colburn to Odell, from Ash Grove to Romney, for decades as these ordinances affect not only the residents in the current proposed development but our entire county. There can be no justice for those affected other than for a potential developer to solicit agreement from them. Edward said our county's existing ordinance permits a land owner to waive the setback requirement from the county and defer to a potential developer's internal safety setback standard. A longer setback would compel a potential developer at the earliest stages of a project to convince the community that the project promotes their health, safety, convenience, and general welfare.

Edward said he only found out about the current development plans in October 2018 through a friend even though the land owner who surrounds his property to the west, north, and east had signed up in April 2018. He said it strikes him as especially devious for a potential developer to be able to disregard small land owners as they begin to sign leases for future development considering how much of a nuisance an industrial wind turbine is. From this position of secrecy, they can attempt to divide the community and work with the county officials to draft ordinances that are in the best interest of their development, but are not considerate of the residents' health, safety, convenience, and general welfare. He said the 2 main nuisances of wind turbines, both stemming from their size, are shadow flicker and sound. These issues are major concerns of residents who face the potential of living with these intrusions into their rural lives. Both issues can be solved by increasing the setback distance to  $\frac{3}{4}$  mile from a non-participating land owner's property line. Edward said he is sure a potential developer will protest that the  $\frac{3}{4}$  mile setback distance is unnecessarily restrictive but because of the waiver right that exists in our current ordinances the setback is only restrictive if the potential developer lacks the will or ability to engage with the community and gain their agreement. In closing, Edward said if wind development truly is as non-intrusive and positive for those living near it as developers would have them believe then it should be very easy for the developer to gain the residents' agreement.

Speaker #6 – Jim Pairitz, 8323 W. 1200 S., West Point, IN 47992

Jim Pairitz said he agrees with options #2 and #3 from the staff report. He believes the setback should be measured from the property line, and he also believes that there should be a maximum height limit. He thinks there should be a fixed setback distance which would eliminate the need for ratios and make things much simpler. The big question, he asked, is what should those limits be? He said limits that are typically used today were put together by the wind industry before 2007 and they have been that way forever. The current setback to a residence is 1,000 feet and to the property line is 1.1 times the height of the turbine, which equals approximately 330 feet to 682 feet depending on the size of the turbine, and sound levels are at 50-60 dBA. If you look at ordinances today around the county, you will see a variety of different setbacks and that seems confusing.

Jim said the  $\frac{3}{4}$  mile setback is about 10 rotor diameters and that resolves the noise and shadow flicker. This is the setback distance he recommends because it eliminates the need for complaints, law suits, ongoing conflict, and the need for sophisticated noise measurement studies to confirm compliance. Environmental consultants use this limit to assess shadow flicker and developers space their turbines at this distance to eliminate wake interference. Jim said they use 10 rotor diameters and they can find land to do that to make a successful project.

Jim showed a power point presentation highlighting some setback increments to consider:

.62 miles setbacks = 3,250 feet = approximately 6.5 times the total height and you will see that in a lot of newer ordinances.

.50 miles setbacks = 2,640 feet and are the interference easement limit in the developers' contracts.

This area is defined as an interference easement in their contract, they compensate individuals who sign a wind lease and easement agreement or individuals who sign a wind project neighbor easement agreement. These participating land owners agree to accept the negative effects of wind turbines. There are 13 of these interference effects listed in the contract. Electro-magnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio, and shadow. It also includes any other effects attributed to wind turbines or any other wind activity. Jim says that is a huge statement which shows the amount of interference the wind turbines create.

.30 miles setbacks = 1,600 feet and this is an old Manufacturer Safety Setback.

.28 miles setbacks = 1,500 feet that is what the developer currently uses as their standard setback from all residents whether participating or non-participating. Jim says he thinks of that as more of a safety setback, but the developer has the right to waive that.

.14 miles setbacks = 750 feet this is the current Tippecanoe County Setback.

Jim said that numerous Indiana counties have changed their wind ordinances in the last year or year and a half.

8 Indiana counties have decided to not permit wind turbines at all.

7 Indiana counties have put key protections in place.

6 Indiana counties have decided on a moratorium or that the ordinance needs improvement.

9 Indiana counties have decided their ordinance needs significant improvements;  
Tippecanoe County is included here.

4 Indiana counties have decided their ordinances are obsolete because they are from 2007.

Jim Pairitz said that all these counties have existing developments and that they have updated their ordinances to be more restrictive than the current standards.

Speaker #7 – Tim Strueh, 624 Bennett Road, Linden, IN 47955 (Tippecanoe County part)

Tim Strueh said he is not opposed to alternate energy. He is an engineer and has worked on small alternative energy projects for Engineers Without Borders. He said he knows the importance of fuel economy, but he also knows how important it is to site a development in the right location. Tim said we need to think about the appropriate location for this wind development the same as we would a landfill or a factory building. Tim said he was surprised when he heard they were proposing a wind farm for Tippecanoe County considering the size of the population of the county. Tim said Tippecanoe County has the

11<sup>th</sup> highest population density in Indiana with 354 people per square mile. He said the counties with WECS developments average 95 people per square mile. He said the median is actually 57 people per square mile. He said in Ohio all the counties with wind farms average 70 people per square mile. In Illinois it is 83 people per square mile and in Michigan it is 77 people per square mile.

Tim said that no county he found with wind farms has a population density within 60% of Tippecanoe County's population. He said 93% of the counties have population densities less than half of Tippecanoe County. Tim looked at counties in Indiana, Illinois, Ohio, Michigan, Wisconsin, Iowa, Kansas, Missouri, Oklahoma and Nebraska and found that no counties with more than 10mw wind farms had a population density as high as Tippecanoe County's. 98% of the counties with wind farms in those states had population densities less than 50% of Tippecanoe County's. 67% of those counties with wind farms have less than 10% of the population density of Tippecanoe County's. 25% of these counties have a population density of less than 12 people per square mile.

Tim said that Invenergy rated Randolph, White, Benton, and Newton counties as permissive and those counties' average population density rank is 81.5 out 92 Indiana counties with 40 people per square mile. Invenergy rated Noble, Whitley, Rush, Miami and Tipton counties as restrictive and those counties' average population density rank is 52 out of 92 counties with 81 people per square mile. Again, he said Tippecanoe County has the 11<sup>th</sup> highest population density of all Indiana counties with 354 people per square mile.

He said Tippecanoe County's peer counties with their population densities are as follows:

Hamilton	696
Allen	541
Tippecanoe	354
Delaware	300
Madison	291
Howard	252
Wayne	172
Grant	169
Kosciusko	146
Boone	134

Of these, Hamilton County has a maximum tower height of 300 feet.

Allen County has banned wind turbines.

Delaware County has a maximum tower height of 150 feet.

Madison County does have a wind farm, but the county lost 27,000 jobs.

Howard has a moratorium on wind farms.

Wayne County has banned wind farms.

Grant County has a moratorium on wind farms.

Kosciusko County has a 3,960 feet setback to the property line and 32 dBA,

Boone County has banned wind farms.

Tim concluded with saying that Tippecanoe County has a growing population density.

Jackson Bogan said there was only time for 1 more speaker and that they would have to cut off the meeting at 5:50 pm.

Speaker #8 – Julie Peretin, 10 N. 19<sup>th</sup> Street, Lafayette, IN 47904

Julie Peretin said Tippecanoe County is one of the few counties in Indiana projected to grow. She wanted to talk about the interference easement. She showed a power point slide with actual parcel sizes from the area in question around Odell. She said the developer will come into the county and offer leases on these parcels and once the land is under contract the setbacks can be waived. This meets the ordinance requirement, so they will place a wind turbine there. She circled an area to show what a ¾ mile radius looks like. She said that

there are only 3 parcels under lease and those are the only 3 people that the developer has talked to. She is using the ¾ mile influence because that is what environmental impact studies will use. They would look at all the properties within 10 rotor diameters of the turbine. She circled what a ½ mile radius would look like within the ¾ mile radius. She said that is the point where the developer will start to offer some compensation for the negative effects of the wind turbines. She said that if someone has a house that is not within the 1,200 feet setback area and they choose not to participate it doesn't matter. The developer does not have to talk to you. She also showed a circled area at 1,500 feet from the turbine which is the voluntary setback from a residence per the developer safety standard and another circle at 1,200 feet from the turbine which is the Tippecanoe County requirement. Julie explained that even though the developer has only leased 3 parcels of land multiple other parcels are going to be affected by just this one wind turbine. She said the same will be true of all the wind turbines the developer will put up. She also said that Tippecanoe County is one of the few counties in Indiana expected to have population growth. In conclusion she said the simplest solution is not to allow wind farms in Tippecanoe County. This will eliminate deep divisions of the neighbors in the affected area. She said that 500- foot turbines are too big, and they can be sited much too close to the properties of land owners that do not wish to participate.

Jackson Bogan told Julie Peretin her time was up and he thanked the speakers from both sides. He asked Sallie Fahey when the issue would be brought up again. Sallie said it will be at the February 6, 2019 Ordinance Committee meeting at roughly 4:40 pm. She said as far as she knows that meeting could be extended to 7:00 pm so there could be a fairly long period of time for discussion and additional comment.

Tom Murtaugh said he wanted to make one comment about the population density and the fact that there are no wind farms in any county as densely populated as Tippecanoe County. Tom said that Tippecanoe County is growing while all the counties where wind farms are currently located are facing population declines. He said he is concerned that a wind farm will tie up that ground for 50 years. He said Tippecanoe County is not a rural county it is an urban county. He said he would like to look at not allowing the permitted use of wind systems in Agricultural zones and only allow them in Industrial zones.

Jackson Bogan asked if anyone else had any other questions. He also said that there would be no further discussion of this matter until the February 6, 2019 Ordinance Committee meeting. He said if anyone were to come to the January 2, 2019 Ordinance Committee meeting they would not be allowed to speak on this.

### III. CITIZEN COMMENTS:

### IV. ADJOURNMENT:

Gary Schroeder moved to adjourn the meeting.

The meeting adjourned at 5:50 p.m.

Respectfully submitted,

*Diana E. Trader*

Diana E. Trader  
Acting Recording Secretary

Reviewed by,

*Sallie Dell Fahey*

Sallie Dell Fahey  
Executive Director

## Memorandum

TO: APC Ordinance Committee  
FROM: Kathy Lind, Senior Planner  
SUBJECT: Change to the two Amendments regarding 10 acre tracts  
DATE: December 21, 2018

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At the November meeting, we heard from two surveyors working in Tippecanoe County that agreed generally with the proposed amendments to the Unified Subdivision Ordinance (USO Amendment #11) and Unified Zoning Ordinance (UZO Amendment #94) regarding changes to our land division regulations. The surveyors, Patrick Cunningham of Vester's and Robert Gross with R.W. Gross & Associates, had two suggestions to improve the proposal.

The first change would clarify that the proposed "farmstead parcelization" would be permitted if the land in question was used as a residence since before 1979 whether or not the residence in place was the original farmhouse. The Ordinance Committee agreed with this idea.

The second change proposed was debated between the surveyors and the Ordinance Committee members, but finally a decision was reached. This change to the amendment would allow Agricultural Wooded (AW) zoned land to be divided into ten-acre tracts, but only if the land within the proposed tract is at least 50% wooded according to the most recent aerial photography available. If the proposed AW-zoned tract is primarily farmland, then 20 acres would be the minimum tract size allowable through Exemption A (as it will be in both the Select Agricultural, AA and Agricultural, A zones).

These modifications to the proposed amendments are shown in yellow on the attached ordinances: USO Amendment #11 is shown first, with UZO Amendment #94 on the last page.

### **STAFF RECOMMENDATION:**

Approval of the modifications as shown and a motion to move the two amendments as shown for full hearing by the APC at its January 16<sup>th</sup> meeting.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER \_\_\_\_\_  
OF ORDINANCE NO. \_\_\_\_\_  
BEING THE UNIFIED SUBDIVISION ORDINANCE  
OF TIPPECANOE COUNTY.**

**Be it ordained** by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No.\_\_\_\_\_, being the Unified Subdivision Ordinance of Tippecanoe County is hereby amended as follows:

**Section 1.** Add the following definitions to **USO Section 2.2** as follows:

**FARM.** An area used for agricultural operations, including truck gardening, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry.

**FARMSTEAD.** The residence (primary use building) of a farm, which must have an area of 30 acres or more. The farmstead land area may include accessory buildings and adjacent service areas of the farm. For the purposes of this definition, the original farmstead must have been built prior to November 19, 1979.

**FARMSTEAD PARCELIZATION.** The one parcelization lot including the farmstead of a parent tract.

**ORIGINAL EXEMPTION A (OE A) TRACT.** A lot greater than or equal to 10 acres and less than 20 acres in size, eligible as a primary use building site that was created by Exemption A (from the definition of Subdivision) after the enactment date of this ordinance (November 19, 1979) and prior to June 1, 2018. For the purposes of this definition, a lot is "created" on the date of its recording or of the surrounding properties' recording.

**ORIGINAL EXEMPTION A (OE A) TRACT PARCELIZATION.** The two lot parcelization permitted per OE A Tract.

**PARCELIZATION TYPES.** Farmstead Parcelization, OE A Tract Parcelization and Standard Parcelization.

**STANDARD PARCELIZATION.** The four lot parcelization permitted per parent tract.

**Section 2.** Replace paragraph A (Exemption A) in the definition of Subdivision in **USO Section 2.2** with the following:

A. For land in the Agricultural (A) or Select Agricultural (AA) zones, or land in the Agricultural Wooded (AW) zone that is primarily farmed, (including any adjacent FP zoned land), a division of land into two (2) or more tracts all of which are at least twenty (20) acres in size. For all other zones, a division of land into two (2) or more tracts all of which are at least ten (10) acres in size. For land zoned AW to qualify as a ten-acre Exemption A tract, 50% of the land in said ten-acre tract must be wooded based on the most recent aerial photography.

**Section 3.** Replace the second paragraph in **USO Section 3.1(1)** with the following:

Exempt divisions are not subject to the requirements of this ordinance. To be eligible as primary use building sites, lots created by exempt division shall be twenty (20) or more acres in size if zoned Agricultural (A), Select Agricultural (AA), or if it is primarily farmland zoned Agricultural Wooded (AW), or ten (10) or more acres in size if in any other zone, or primarily composed of woodland in the AW zone (Exemption A in the definition of subdivision), unless created by order of a court (Exemption C). Subsequent to the adoption of the May 1988 amendment (on June 6, 1988 by the Tippecanoe County Commissioners; on July 11, 1988 by the Lafayette City Council; on June 6, 1988 by the West Lafayette City Council; on July 5, 1988 by the Battle Ground Town Board; on July 11, 1988 by the Dayton Town Board; on April 1, 1996 by the Clarks Hill Town Council), no primary use building site created as an Original Exemption A Tract shall be reduced below ten (10) acres unless by subdivision, parcelization, or order of a court (Exemption C). No A, AA, or primarily farmed AW zoned primary use building site created through Exemption A shall be reduced below twenty (20) acres through Exemption E. In any other zone, no primary use building site created through Exemption A shall be reduced below ten (10) acres through Exemption E. For purposes of this paragraph, a lot is "created" on the date of its recording.

**Section 4.** Replace the second paragraph in **USO Section 3.1(2)** with the following:

However the further division of a parent tract from which four (4) minor subdivision lots or four (4) standard parcels (or a combination of both) eligible as primary use building sites have already been created, shall be classified as a major subdivision, unless this further division is classified as a Rural Estate Subdivision, or exempt by Original Exemption A Tract Parcelization or Farmstead Parcelization, or complies with Exemption A or C in the definition of Subdivision. For purposes of this paragraph, a lot is "created" on the date of its recording.

**Section 5.** Replace the table in **USO Section 3.5(3)(a)** with the following:

Parcelization Type	Maximum Number of Lots permitted per Parent Tract	Minimum Lot Area (Exclusive of Right-of-Way)
Farmstead	1	2 acres
OE A Tract	2 (per OE A Tract)	2 acres
Standard	4	2 acres

Parcelization land divisions are only permitted in the Agricultural (A), Select Agricultural (AA) and Agricultural Wooded (AW) zones.

**Section 6.** Change **USO Section 3.5(3)(b)** as follows:

(b) Parcels Abutting a Public Road.

For parcels that abut a public road, the minimum parcel width shall be 200 feet. Parcel width shall be measured along the right-of-way line of the public road. For parcels abutting more than one public road, parcel width standards need only apply to one public road abutted. For parcels abutting a public road that cannot derive access from that road, an easement for vehicular access and utility placement, connecting all such parcels to a public road, shall be provided at the time of parcelization. Where a physical impediment or the shape of the parent tract prevents a proposed parcel from meeting the minimum 200-ft of frontage standard, the Executive Director may waive this requirement; however, the parcel width may never be less than the minimum lot width required by the Unified Zoning Ordinance for that particular zone.

**This ordinance shall be in full force and effect from and after its passage.**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING  
ORDINANCE NO. \_\_\_\_\_  
BEING THE UNIFIED ZONING ORDINANCE  
OF TIPPECANOE COUNTY.**

**Be it ordained** by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No. \_\_\_\_\_, being the Unified Zoning Ordinance of Tippecanoe County is hereby amended as follows:

**Section 1.** Replace paragraph A (Exemption A) in the definition of Subdivision in **UZO Section 1-10-2 WORDS AND TERMS DEFINED** with the following:

- A. For land in the Agricultural (A) or Select Agricultural (AA) zones, or land in the Agricultural Wooded (AW) zone that is primarily farmed, (including any adjacent FP zoned land), a division of land into two (2) or more tracts all of which are at least twenty (20) acres in size. For all other zones, a division of land into two (2) or more tracts all of which are at least ten (10) acres in size. For land zoned AW to qualify as a ten-acre Exemption A tract, 50% of the land in said ten-acre tract must be wooded based on the most recent aerial photography.

This ordinance shall be in full force and effect from and after its passage.

# ORDINANCE NO. \_\_\_\_\_

## AN ORDINANCE AMENDING ORDINANCE NO. \_\_\_\_\_ BEING THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY.

**Be it ordained** by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No. \_\_\_\_\_, being the Unified Zoning Ordinance of Tippecanoe County is hereby amended as follows:

**Section 1:** Change **UZO Section 3-2 Permitted Use Table** by adding the following seven entries (in light gray) after SIC Group 14 **Mining and quarrying of nonmetallic minerals, except fuels** as shown below:

Special Cond.	SIC Group	Permitted Primary Uses	I3	A	AA	AW	RE	FP
4-11-4, 4-9-7, 4-4-8	<b>14</b>	<b>Mining and quarrying of nonmetallic minerals, except fuels</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		<b>S</b>
4-11-4, 4-9-7, 4-4-8	<b>except:</b>  <b>141</b>	<b>Dimension Stone</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		
4-11-4, 4-9-7, 4-4-8	<b>142</b>	<b>Crushed &amp; Broken Stone, including Riprap</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		
2-27 if FP, 4-11-4, 4-9-7, 4-4-8	<b>144</b>	<b>Sand and gravel</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		<b>S</b>
4-11-4, 4-9-7, 4-4-8	<b>145</b>	<b>Clay, ceramic, and refractory minerals</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		
4-11-4, 4-9-7, 4-4-8	<b>147</b>	<b>Chemical &amp; fertilizer mineral mining</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		
4-11-4, 4-9-7, 4-4-8	<b>148</b>	<b>Nonmetallic minerals services, except fuels</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		
4-11-4, 4-9-7, 4-4-8	<b>149</b>	<b>Miscellaneous nonmetallic minerals, except fuels</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>		

This ordinance shall be in full force and effect from and after its passage.