

The  
**AREA PLAN COMMISSION**  
of Tippecanoe County

**Ordinance Committee & Bylaws Committee  
Notice of Public Hearing**

Date: April 3, 2019

Time: 4:35 PM

Location: Tippecanoe County Office Building

Tippecanoe Room

20 North Third Street

Lafayette, IN

**\*\*REVISED AGENDA\*\***

**I. APPROVAL OF MINUTES FROM THE MARCH 6TH MEETING:**

Documents:

[ORD 03.06.2019.PDF](#)

**II. WAIVING THE FILING FEE FOR THOSE APPEALING A CITATION:**

This was approved by APC at its March meeting, but the action requires a change to the APC Bylaws - Sallie Fahey

**III. PROPOSED CHANGES TO MULTI-FAMILY:**

A discussion regarding multi-family: first, allowing it by right in the OR zone where it is currently not permitted and second, changing the outdated height limit in R3W and R4W zones - Kathy Lind & Ryan O'Gara

**IV. MINOR FIXES TO THE UZO:**

Staff has become aware of a couple of instances where the SIC (Standard Industrial Classification) number shown in the UZO is incorrect - Kathy Lind

**V. CITIZEN COMMENTS**

**VI. ADJOURNMENT**

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

DATE.....MARCH 6, 2019  
 TIME.....4:45PM  
 PLACE.....COUNTY OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Jerry Reynolds  
 Gerry Keen

**STAFF PRESENT**

Sallie Fahey  
 Ryan O’Gara  
 Kathy Lind  
 John Burns.  
 Diana Trader  
 Zach Williams

**OTHER ATTENDEES**

Bill Miller  
 Barb Strueh  
 Marisa Marcussen  
 Susan Deno  
 Gary Stair  
 Stan Wanner  
 Ed Heatherington  
 Faye Cole  
 Dawn Hays  
 David Loser  
 Karen Griggs  
 Kathleen Riley-Beck  
 Lisa Dullum  
 Susan Whaley

Kay Miller  
 Tim Strueh  
 Corey Snoeberger  
 Mary Deerr  
 Mark Albregts  
 Kay Pairitz  
 Julie Peretin  
 Robert Vester  
 Mark Russell  
 Lori Russell  
 Grace Craig  
 Donald Thelen  
 Tam Bougher

Mike Devine  
 Del Craig  
 Dustin Snoeberger  
 Anthony Holt  
 Louann Albregts  
 Peg Barton  
 Betsy Blair  
 Sallie Mohler  
 Dale Wolfe  
 Gini Tull  
 Ron Tull  
 Randy Deno  
 Taylor Haggerty

Chair Jackson Bogan called the meeting to order.

**I. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the February 6, 2019 Ordinance Committee meeting. Greg Jones seconded, and the motion passed by unanimous voice vote.

## II. PROPOSED CHANGES TO THE UZO REGARDING QUARRYING IN THE FLOOD PLAIN ZONE:

An update on restricting certain uses from the Flood Plain zoning district – Sallie Fahey & Zach Williams.

Jackson Bogan said there would be 45 minutes allotted for item #2, he said staff would present their findings first. Jackson said he will then ask those in favor of leaving the ordinance as it stands today to come forward and speak and they will have 20 minutes. He said he will then ask those in favor of making the ordinance more restrictive to come forward and speak and they would have 20 minutes also.

Sallie Fahey said there was not much to report other than to reiterate that the decision was made that until this legislative session ends and we know what does or does not happen there, it would be premature to do anything locally. Sallie said the bill that was introduced in the House did not get a committee hearing. She said it could potentially be added to another bill at the end of the session. Sallie said it would be about a month before we know what happens with this legislative session. She said after that a decision will have to be made about what the best option going forward locally will be.

Jackson Bogan asked if there was anyone who wanted to speak in favor of leaving the ordinance as it stands today. No one came forward to speak.

Jackson Bogan asked if there was anyone who wanted to speak in favor of making the ordinance more restrictive.

Betsy Blair, 8287 Old State Road 25 N. Lafayette, IN 47905, said her family has lived in this area since the 1960s. Betsy said she had a BS degree in Forestry from Purdue. She said she and her neighbors live in or near the Wabash River Valley which includes tributaries such as the Tippecanoe River, Sugar Creek, and Wildcat Creek. She said during 2018 the Ordinance Committee discussed an amendment and changes to the permitted use table of the Unified Zoning Ordinance. She said at the February and March 2018 Ordinance Committee meetings there was extensive discussion about mining in the flood plain and the risk to wells, the risk of de-watering, and the risk of existing operations such as gravel pits in the county. Betsy said it was noted that the Comprehensive Plan says that protection of the flood plain is more important than allowing mineral extraction, and that the Comprehensive Plan had been adopted by every legislative body in Tippecanoe County. She said citizen input noted concerns about industrial mining in the flood plain, about protecting prime farm ground, and about pollution. Betsy said there is currently no regulatory distinction between gravel mining and industrial quarry mining operations as indicated by the SIC codes. Betsy said at the August 2018 Ordinance Committee meeting Sallie Fahey said staff would like to bring back the issue of not allowing mining and quarrying in the flood plain. She said Zach Williams concurred that any ban on mining and quarrying would have to be done through the zoning process. Betsy said at the November 2018 Ordinance Committee meeting the proposed revisions to the use table and text of the UZO were reviewed and the result was that minor changes were to be made on the copy to prepare for voting during the January 2019 Ordinance Committee meeting. Betsy said at the January 2019 meeting the Ordinance Committee indicated they were looking for further citizen input on this topic, and no action was taken at that time. She said the Americus Area Community Coalition is a local community organization interested in protecting the resources of their Tippecanoe County neighborhood, particularly along the Wabash River and associated flood plain. Betsy said she is a member of AACC and she opposed the earlier proposal to operate a limestone quarry in the Wabash River flood plain. She said Tippecanoe County has also opposed the proposal along with the cities of Lafayette and West Lafayette and the town of Battle Ground. Betsy said recreation is a valuable asset in a growing community such as Tippecanoe County. She said allowing industrial uses of the flood plain along the Wabash River will eliminate the possibility of expanding recreational opportunities here. Betsy said the county already has plans underway for new recreational areas such as the Hoffman Preserve near Americus. She said trails that exist along the Wabash River would

not be compatible with industrial mining nearby, neither would fishing, boating, and other outdoor activities. She said the quality of life that residents currently enjoy in this area would be severely impacted. Betsy said she supports the previously proposed changes to the text of the Unified Zoning Ordinance and the permitted use table. She asked the board to vote for that change. Betsy also defined the terms base flood events, flood plains, floodways, and flood fringes.

Sally Mohler, 4033 Willowood Drive, Lafayette, IN 47905, said she has a bachelor's degree and a master's degree from Purdue University and has done post-graduate work. Sally said she is also a member of the AACC group. She said she is concerned about flooding on the Wabash River. She said that understanding the recent history of flooding on the Wabash River helps people to put the importance of the flood plain in perspective. She said both the historical Wabash River flood levels and local topography are used to calculate the base for the 100-year flood plain. She showed slides of historical flood events in the Lafayette area for the past 160 years. She said she obtained this information from the National Weather Service. Sally said a low flood event is equivalent to a river depth of 11ft-19ft, a moderate flood event is equal to a river depth of 20ft-25ft, and a major flood event describes river depths of 25ft and above. Sally presented data about flood events from 1858-1957 and the number of different flood events per year for 100 years. She compared that with data from 1958-2018 and the number of flood events per year for that 60-year period. She contrasted the percentage increases of flood events from the 2 periods. Sally said the total number of flood events has increased by 123% in the past 60 years when contrasted with the previous 100 years. Sally said the dramatic increase in total flood events may be due to the substantial land development in the area, which has led to increased surface water runoff. Sally then spoke about the water balance in natural areas versus developed areas. She said a study was conducted by Purdue University using 31 years of data regarding rainfall on the West Lafayette campus. She said the 3 components of water balance are evaporation, runoff, and infiltration. She talked about evapotranspiration, which occurs off vegetation, trees and undeveloped ground surface. She also talked about runoff and infiltration. Sally said in summary we need to monitor future development, so it does not contribute to increased surface water runoff embedded with pollutants into the Wabash River. She said we also need to protect the Wabash River flood plains, so they can fulfill their intended purpose. Sally said she supports the proposed amendment to the Unified Zoning Ordinance.

Mike Devine, 9711 Brandenburg Lane, Lafayette, IN 47905, said he has a bachelor's degree in Industrial Technology from Western Illinois University. He said he worked for Caterpillar for 41 years developing industrial power and electric power generation projects. Mike said he wanted to talk about riparian zones and the relationship between flood plain mining and river channel alterations. Mike said riparian zones are the lands lying adjacent to a body of water such as a river, pond, creek or wetland area. Mike said these areas are the buffer zones between the water and the upland areas. He said these areas consist of hardwood forests, natural vegetation, and sometimes croplands. He said these are the types of places where nature trails are often located, places where people go to hunt and fish, and places where people choose to spend secluded time away from their busy lives. Mike said riparian forest and vegetation support many species of wildlife and aquatic organisms, and their root structures help control erosion. He said riparian surface vegetation helps control surface water from absorbing pollutants carried into the river by storm water runoff. Mike said turbidity of the water increases when the vegetation filter is reduced making the water look murky. Mike showed a slide of the junction of the Wabash and Tippecanoe Rivers and pointed out the change in turbidity as the 2 rivers mixed together. He said the reduction of bank-side trees and vegetation exposes the water to more sunlight increasing the water temperature. He said warmer waters cannot hold as much dissolved oxygen and that puts the balance of nature at risk. He said the warmer waters increase aquatic plant growth and allow non-native species of plants, fish, and wildlife to take hold. Mike said algae growth is out of balance in warm waters which further reduces the dissolved oxygen, killing other aquatic life. He said increases in water temperature can lead to changes in the balance of life in and around the river. Mike said flood plain mining can affect the course of the river itself. He cited a study from the Washington Department of Natural Resources stating that regardless of the best planning and

intentions the impacts of flood plain mining may simply be delayed until the river is captured by the mine pit. Mike said that capture may not occur in the next 100-year base flood event, but it is likely to occur in the future as development and flood magnitudes increase. He said the research goes on to say that river capture by mining activity is a near certainty. He said mined areas have a lower base elevation and there is a risk of channel change into these areas, a process called avulsion. Mike said water always moves from a high point to a low point and sediment and rocks move along with the water as it flows. He said water and sediment from the Wabash River find their way to the Mississippi River and down to an alluvial fan at the Gulf of Mexico.

Kay Miller, 8143 Old State Road 25 N, Lafayette, IN 47905, said she would like to relinquish her time to Mike Devine.

Mike Devine, 9711 Brandenburg Lane, Lafayette, IN 47905, continued speaking about the river water leveling out, cutting down high points and filling in holes. He said flood waters will eventually find their way to the lower excavations, and the avulsion and breaching process begins. Mike said the water flowing into these lower depressions starts to erode the edge of the excavation. He said eroding upstream sediment moves into the excavation and tries to re-establish the grade by filling in the hole. He said that as the water moves downstream there is little sediment left in it, which will lead to more erosion downstream. Mike showed slides of river channel change from mining activity.

Gary Stair, 8287 Old State Road 25 N., Lafayette, IN 47905, said he has a bachelor of science degree in Agriculture from Purdue University. Gary said that gravel mining is not a stand-alone activity, and that many times asphalt plants and concrete plants follow as additional activities in the mining area. These activities lead to contamination of ground water. Mike said that if mining equipment is a permanent fixture it can be considered as real property, and he said state statute says that real property can be regulated in a flood hazard area. He said the APC can choose to pass an ordinance that restricts development in a flood plain. Mike said the Indiana Appeals Court has said flood plain regulations trump mineral extraction. Mike said that the flood plain regulations in Tippecanoe County are more protective than any other place in Indiana. He said those regulations have served the county well in that there are fewer structures left in the flood plain today. He said since 1965 these regulations have reduced the loss of property and life. He said eventually the non-conforming structures in a flood plain go away. Mike said the Comprehensive Plan of Tippecanoe County indicates that protecting flood plains is more important than mineral extraction. Mike asked the Ordinance Committee to vote yes on the proposed UZO amendment.

Jackson Bogan said the committee will move on to item #2.

### **III. WIND ENERGY FARMS (LARGE WECS):**

Attached is the proposed amendment to the Unified Zoning Ordinance as decided at the February Ordinance Committee meeting – Sallie Fahey & John Burns

Sallie Fahey said at the last meeting the committee directed staff to prepare an ordinance that would eliminate large wind farms in Tippecanoe County. Sallie said that under legal counsel direction the definitions of large wind systems and wind farms do need to remain in the ordinance. She said in the state of Indiana anything that is not regulated is permitted. Sallie said the definitions need to remain in the ordinance and the use table but need to be shown as not permitted by right or by special exception. Sallie said the S in the use table, which stands for special exception, would be deleted for large wind systems and wind farms. She said all development standards in Section 4-11-11 have been removed for large wind systems and wind farms. Sallie said that Section 1 still shows footnote 19 which pertains to more than just this land use. She said it pertains to any utility that is owned by a government agency or any utility that is under the regulation

of the IURC, the Indiana Utility Regulatory Commission. Sallie said the IURC has several standards such as the IURC regulates rates and that this is a utility that is available to all citizens and one or two other criteria. She said if a company meets these criteria, they are exempt from our ordinance. Sallie asked if a wind energy company builds a wind farm and they provide electricity directly to customers, and they meet all the IURC criteria would they then be exempt. She said she believes that most wind energy companies sell their electricity to a different company. She thinks for example that Duke Energy probably has one company that generates electricity and another consumer company that distributes the electricity to its customers. Sallie said she thinks that those situations would not meet the public utility and exemption category because they are not selling to consumers. She believes they would be considered a wholesale company which sells generated electricity to another company that would then sell it to the consumer.

Zach Williams said most likely that determination will be outside of local control and it will be regulated by IURC. Zach said in all likelihood, a local government would not be able to regulate a wind energy company if it meets IURC criteria.

Tom Murtaugh asked if the current ordinance was in place then a qualifying wind energy company would not be bound by our setbacks.

Zach said it would be treated like any other utility and a qualifying utility would most likely be exempt.

Sallie said that footnote 19 came out of a lot of Indiana court cases that said if a utility is regulated by the IURC, then the state is regulating it and local governments cannot. She said there are criteria for what is considered as state regulation.

Jackson Bogan asked for clarification that those companies meeting IURC criteria would be regulated by the state and not by local governments.

Sallie Fahey said that was correct.

Jackson Bogan asked if they would be bound by land use regulations.

Sallie Fahey said the state does not regulate where they can be located, only rates and IURC standards.

Zach William said that is a separate regulatory body that Tippecanoe County Government would have no impact on or local control over.

Sallie said another example might be a utility substation. She said local governments cannot regulate where those are located because they are part of a public utility system. Sallie said if someone wanted to build a substation that was not a public utility then it could be regulated by local government.

Tom Murtaugh asked if Indiana has any wind farm projects which are regulated by IURC.

Gary Schroeder said he thought NIPSCO was going to build their own wind farms in the counties north and east of Tippecanoe County. Gary thought the electricity from those wind farms would be for NIPSCO's own use.

Sallie Fahey said if they use all the electricity for their own use and do not sell any of it to their customers it is an accessory use. Sallie said if they need electricity for a power generating dam and they use wind turbines for that purpose, and they do not sell any of that electricity to the general public it would be an accessory use and not a primary use.

Gary Schroeder said he thought NIPSCO was proposing large wind farms.

Sallie Fahey said she was not aware of that.

Zach Williams said he had not researched whether the IURC is regulating any wind farms.

Jackson Bogan said for the committee's purpose here today they cannot do anything about the IURC regulating wind farms.

Sallie Fahey said that was correct, and she wanted to clarify that the Ordinance Committee is not doing anything with small wind turbines and micro turbines. She said a farmer who wanted to erect small wind turbines on his property for his personal use would still be allowed to do that.

Larry Leverenz asked what would happen in a case where the individual produced more electricity than he could use and wanted to sell it back to the utility company.

Sallie Fahey said if the equipment meets the definition of small wind system or micro system that is what matters. They would be allowed to sell excess electricity back to the utility company.

Sallie said she had a letter addressed to the Ordinance Committee from the Go Greener Commission in favor of wind turbines.

Zach Williams said the letter did not need to be read aloud.

Sallie Fahey said the letter is addressed to the Ordinance Committee and if the authors of the letter want it to be read into the record of the full Area Plan Commission meeting, they will need to write another letter addressed to the APC.

Karen Griggs, 100 Thornbush Drive, West Lafayette, IN 47906, asked that the letter be read aloud so the public can understand what is going on.

The Ordinance Committee asked Sallie to read the letter.

Sallie Fahey said the letter is from the Go Greener Commission and signed by Lindsey Payne, Chair. It is dated March 1, 2019 and addressed to the Tippecanoe County Ordinance Committee. Sallie read the letter in favor of wind turbines being allowed in Tippecanoe County.

Julie Peretin, 10 N. 19<sup>th</sup> Street, Lafayette, IN 47904, said the group she represents does support staff's recommendation.

Gary Schroeder said the Ordinance Committee did not want to commit large amounts of acreage to wind farm leases of 50-100 years, which could not be developed for residential or industrial growth. Gary said the Go Greener Commission's letter stated the county does not need sprawl in the rural areas, but he said people do not want smaller lots they want bigger lots. He said it is a difficult situation to allow for growth. He said people don't want to re-develop within the city. He said there are a lot of groups in this community that spend a lot of time to allow for the community to grow and to have jobs and houses, so this won't be a dying community.

Jackson Bogan asked for a motion to send the ordinance forward to the full APC.

Tom Murtaugh moved to send the ordinance to the full APC. Greg Jones seconded, and the motion carried by voice vote.

Jackson Bogan said this ordinance will be heard at the April APC meeting on the 3<sup>rd</sup> Wednesday in April at 6:00 pm at this same location.

Sallie Fahey said staff and the Ordinance Committee should begin working on an ordinance regarding solar farms. Sallie said she thought that would be the next issue to arise. Sallie said there was a request on the Indiana Planners' listserv asking whether any other counties had developed a solar farm ordinance. Sallie said there were several replies and she has been collecting the ordinances and comments from the planners in those communities as a place to start when the committee is ready to begin that discussion.

Jackson Bogan asked Sallie Fahey if Area Plan Staff needed a request from the Ordinance Committee to begin working on this.

Sallie Fahey said if the committee is agreeable staff will let them know about what is state of the art or at least what is being done in Indiana on the issue of solar farms.

**VI. CITIZEN COMMENTS:**

**VI. ADJOURNMENT:**

Gary Schroder moved to adjourn the meeting.

The meeting adjourned at 5:35 p.m.

Respectfully submitted,

*Diana E. Trader*

Diana Trader  
Acting Recording Secretary

Reviewed by,

*Sallie Dell Fahey*

Sallie Dell Fahey  
Executive Director