

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY
JOINT MEETING OF THE ORDINANCE COMMITTEE AND BYLAWS COMMITTEE
MINUTES OF PUBLIC MEETING**

DATE.....APRIL 3, 2019
 TIME.....4:45PM
 PLACE.....COUNTY OFFICE BLDG.
 20 N. 3RD STREET
 LAFAYETTE, IN 47901

MEMBERS PRESENT

Jackson Bogan
 Jerry Reynolds
 Carl Griffin
 Gary Schroeder
 Larry Leverenz
 Vicki Pearl
 Lisa Dullum

MEMBERS ABSENT

Tom Murtaugh
 Gerry Keen
 Greg Jones
 Jake Gray

STAFF PRESENT

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

OTHER ATTENDEES

Bill Miller
 Chad Spitznagle
 Steve Clevenger

Kay Miller
 Erik Carlson

Julie Peretin
 Jason Powell

Chair Jackson Bogan called the meeting to order.

I. APPROVAL OF MINUTES

Carl Griffin moved to approve the minutes from the March 6, 2019 Ordinance Committee meeting. Gary Schroeder seconded, and the motion passed by unanimous voice vote.

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

Sallie Fahey said that after the Ordinance Committee heard this proposal, it was changed specifically to not assess a violation fee until after the 15-day filing period for an appeal had passed. Sallie presented a Violation Citation Flowchart which detailed the different scenarios of how a zoning violation citation might progress through the system. Sallie said the first thing to happen is a Certified Letter of Violation is issued by the Administrative Officer. She said that begins the 15-day grace period, if the owner contacts the AO within that 15 days and begins compliance no fine will be assessed. Sallie said if the owner fails to contact the AO within 15 days, then a Letter of Notice of a \$250 fine is issued. She said if the owner pays the fine and

begins to remedy the violation then no further action by the AO is required. Sallie said the third scenario is after 30 days if the owner still does not pay the \$250 fine or begin compliance then a Letter of Notice of a \$500 fine is issued. She said if the owner now pays the fine and begins to remedy the violation then no further action by the AO is required. Sallie said if the owner does not pay the fine or begin compliance after 45 days another Letter of Notice of \$750 fine is issued. She said if the owner now pays the fine and begins the remedy no further action by the AO is required. Sallie said the next scenario is if the owner does not pay the fine or begin compliance then legal action begins. Sallie said the next scenario is if within the first 15 days the owner contacts the AO and files an Appeal of Decision of the AO with the Area Board of Zoning Appeals, then no fine is issued. Sallie said if the ABZA finds in favor of the owner then no fine is issued. Sallie said at this point the owner has not paid a fine or a filing fee for the appeal. Sallie said if the ABZA finds in favor of the owner then the AO could appeal that decision to the Superior Court or Circuit Court.

Zach Williams said if that happened the county would probably not have to pay a filing fee in court for that.

Sallie Fahey said the final scenario is if the owner contacts the AO within the first 15 days and files an appeal with the ABZA. She said if the ABZA finds against the owner and in favor of the AO then a \$250 fine is assessed. She said the owner could appeal that decision to the Superior Court or Circuit Court. Sallie said the question is whether there should be a fine assessed and a filing fee to appeal the citation. Sallie said the fact is that the fine has been delayed until after the appeal date. She asked the committee if they still wanted to waive the filing fee for the appeals process if a fine had not been assessed. Sallie asked if this kind of case should be any different than any other type of appeal for the purposes of filing fees. Sallie told the commission that if they did not want to charge a filing fee then there was a 2nd handout with her proposal for amending the fees in the bylaws.

Jackson Bogan asked that in a case where the ABZA finds in favor of the owner and no fine is issued should they be charged a filing fee?

Sallie Fahey said yes, that these cases should be handled just like anyone else who files an appeal to the ABZA.

Jackson Bogan said he would vote no.

Sallie said the filing fee comes at the front and the ABZA makes its decision at the end of the process. Sallie said it was her understanding that the commission wanted to waive the filing fee because they felt the owner shouldn't have to pay both a fine and a filing fee for an appeal. She said there is no fine assessed when an appeal is filed.

Jackson Bogan said the AO was found to be incorrect.

Lisa Dullum asked if the owner would have to pay the \$500 filing fee if he was found to not be in violation.

Sallie Fahey said it should be handled just like anyone else who files an appeal.

Jackson Bogan said he would find it hard to go to someone after the AO had been found to be incorrect in their assessment and ask for \$500.

Sallie Fahey said the \$500 needs to be filed ahead of the hearing in order to get on the docket with the ABZA. Sallie said the \$500 helps to cover staff costs for any kind of case that comes to the ABZA.

Carl Griffin said he thought the previous discussion was that there would be no filing fee for appealing a zoning violation decision by an AO.

Sallie said her understanding was that it was only an issue if the owner also had to pay the fine along with a filing fee.

The commission disagreed.

Sallie Fahey said then the owner wouldn't have to pay a fine and he wouldn't have to pay a filing fee to find out if he is wrong. Sallie said it could take months to find out what the ABZA decision is and the filing fee needs to be paid ahead of the appeals process.

Zach Williams said if there is a hearing and the owner is determined to be in violation at that point there will be more than a \$250 fine. He said now there is a continuing violation that has already been heard and determined and the case will default back to Zach's discretion. Zach said at that point he is going to seek the maximum penalty available because he knows there has already been a contested hearing and the case will go to court. He said this is versus waiving the filing fee completely in cases that are contested where the owner wants to appeal. He said if the owner wins the appeal the filing fee is waived, and if he loses the filing fee is going to be miniscule compared to the \$1500 per day fines he will face.

Sallie Fahey said that was not at all clear to her and she thought the problem was the double dipping of the fine and filing fee together.

Carl Griffin said the commission's feeling was that it should be treated the same as contesting a traffic ticket. He said it would not cost him anything to challenge a traffic ticket in court but if he is found to be wrong, he will have to pay the ticket. He said if he is found to be right it will not cost him anything to get to that point.

Zach Williams said that was what had been discussed previously and staff would monitor the situation to see whether that created an increase in the number of appeals filed.

Sallie Fahey asked for confirmation that the commission only wanted to waive the filing fee for appealing a zoning violation citation and they did not want to waive all filing fees for all types of appeals.

Jackson Bogan said that was correct and the reason for this was the decision was made by one party versus another one party. Jackson said the case should be able to be heard and if the county is found to be incorrect, they don't want the owner to have to pay anything.

Zach Williams said the violation citation letter procedure would be a very clear distinction between normal AO decisions and this type of citation. Zach said this would be an alternative process used in limited circumstances when the AO wants this extra tool. Zach said he thought the addition to the actual UZO text change was Violation Citation Notice Letter Provision. He said the language should match whatever that language was, so it is clear it only applies to that type of case.

Sallie Fahey said staff can put this bylaw amendment on the April agenda under new business since it does not require a legal advertisement. She said it only requires a certain number of days' notice to the APC.

Zach Williams said this should be done before the process is up and running. He said he wanted to put out some guidance for the AOs as far as how the process works along with a flow chart.

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 & R4W zones – Kathy Lind & Ryan O'Gara

Ryan O'Gara said staff wanted to table this change for the time being. He said after the US 231 Plan was adopted by the West Lafayette City Council there were recommendations to pursue zoning changes for the Discovery Park district. Ryan said part of that was to create a form-based code and a mixed-use environment for the area where the Aspire project is going and for the new Convergence building. Ryan said a neighborhood rezone was done of that entire corridor and the Discovery Park area east of Airport Road was rezoned Office Research OR. He said the intention was to try to find a way to add a mixed-use option. He said OR currently does not have a residential option. He said the Medical Related MR zone does have a mixed-use option and they wanted something similar for the OR zone. Ryan said staff found a way to do this by using the footnote that is presently in the ordinance that requires any multi-family use to be above the shop. He said this could be applied regardless of where the OR zone is located. He said it

could be anywhere in the county. He said they did not change any setbacks or height standards. Ryan said they just added a footnote that OR is primarily a non-residential district but there is an option for mixed-use if it is located above the shop area. Ryan said that would pave the way for Discovery Park because in a form-based code environment the underlying zone only controls uses, it does not control the development standard. Ryan said that would be a way forward to do mixed-use buildings in Discovery Park and the form-based code that staff is currently drafting will then create urban standards. Ryan said the OR change was meant to be accompanied by the form-based code. He said it can be used independently, he said the City of Lafayette is looking at using the OR zone. He said they currently have no OR zones in the city limits but they like the mixed-use option. Ryan said other localities have an interest in this pursuit moving forward but there is no immediate need. Ryan thought this should be tabled until he can make sure PRF is on board with it and by then maybe the form-based code will be done also. Ryan said staff was going to couple that with some changes to the R3 and R4 zones regarding height limitation. He said he is trying to allow for more urban buildings in the urban zones, but he wants to hold off on that for now as well.

IV. MINOR FIXES TO THE UZO:

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

Kathy Lind said staff found that a SIC number is wrong on page 207 of the Unified Zoning Ordinance. Kathy said it involves the buffering that is required around batch plants. She said the ordinance specifically says non-temporary batch plants which would be permanent batch plants but the SIC number is for a temporary batch plant. Kathy said she would like to correct the SIC number.

Jackson Bogan asked if she would correct the SIC number or move the non-temporary.

Kathy said she wants to correct the SIC number.

Carl Griffin said there is a different SIC number for permanent batch plants and asked Kathy if she was going to use that.

Kathy said that was correct. Kathy said this was brought to staff's attention by an attorney who asked about it. Kathy said buffering is not needed around a temporary batch plant.

Zach Williams asked if staff wanted to call this a scrivener's error.

Kathy Lind agreed and said that if this is treated as a scrivener's error it does not need to be published.

Carl Griffin moved to change the SIC code to reflect consistency with the wording which is permanent or non-temporary batch plants due possibly to a scrivener's error.

Gary Schroeder seconded, and the motion carried by unanimous voice vote.

V. CITIZEN COMMENTS:

VI. ADJOURNMENT:

Jackson Bogan adjourned the meeting.

The meeting adjourned at 5:10 p.m.

Respectfully submitted,

Diana E. Trader

Diana Trader
Acting Recording Secretary

Reviewed by,

Sallie Dell Fahey

Sallie Dell Fahey
Executive Director