

**MINUTES  
WHITLEY COUNTY PLAN COMMISSION  
SPECIAL MEETING  
SEPTEMBER 5, 2018 7:00 P.M.**

**MEMBERS PRESENT**

John Johnson  
John Woodmansee  
Elizabeth Deckard  
Tom Western  
Brad Wolfe  
Doug Wright  
Joe Wolf  
Mark Mynhier  
Thor Hodges

**STAFF**

Nathan Bilger  
Jennifer Shinabery

**ATTORNEY**

Dawn Boyd

**VISITORS**

There were 218 visitors who registered their attendance at the September 5, 2018 special meeting of the Whitley County Plan Commission. A signed guest list is kept on record.

**CALL TO ORDER/ROLL CALL/OATH TO WITNESSES**

Mr. Wright called the meeting to order at 7:05 p.m. Ms. Shinabery read the roll call with all members present. Attorney Boyd administered the oath to those present who wished to speak during the meeting.

**OLD BUSINESS**

**18-W-ZOA-1** Continuation of the public hearing regarding the development of amendments to the Whitley County Zoning Ordinance related to Agricultural and Residential uses.

Mr. Bilger gave a PowerPoint presentation, highlighting and explaining the major changes from the August 15<sup>th</sup> meeting, which are:

1. Translation of narrative proposal to code language (Chapters 3, 5, 10, and 12 of the Zoning Ordinance.
2. Options for 660' separation of CFO to off-site residence or 250' setback from property line.
3. Addition of Section 5.23, Residential Development Overlay.
4. Zoning information notice.

He also gave an overview of the entire proposal, including the items that did not change from the previous meeting in August.

Scott Wagner, Whitley County Health Department, presented a report to the Commission which was submitted to the record.

Mr. Wright opened the public hearing and explained some general guidelines. There were 6 group representatives who spoke and 4 individuals.

John O'Connell, 1705 E. Bair Road, Columbia City, President of Whitley Water Matters, stated he was speaking on behalf of many in attendance and had those in support of his presentation stand. He emphasized that they were not against large scale farming and they do not wish to impede agricultural growth in Whitley County. He stated that their stance is that location matters regarding CFO/CAFOs. He stated that they are in support of the staff proposal with two changes. He stated that their first recommendation is to adopt the Interim Overlay, specifying and including the location where it will be applied; the second being a 660' setback, rather than 250', measured from property lines for any new CFOs or CAFOs.

Brian Heck, Beckman Lawson LLP, 201 W. Wayne Street, Fort Wayne, stated that his firm represents Pete Eshelman, Byron Lamm and other residents of southeast Jefferson Township. He referred to the letter that his partner, Pat Hess submitted to the Plan Commission and the County Commissioners on August 31, 2018 and stated he would be reiterating the points of that letter. The letter was submitted to the record. He stated that his clients *conditionally* support the proposed zoning amendment as long as it includes the Residential Development Overlay District, which should include initiating a rezoning of southeast Jefferson Township. He stated that setback requirements are insufficient in that they can be waived through the Board of Zoning Appeals. He stated that there is not anything that would legally prevent the Plan Commission from establishing the guidelines for an overlay zone at this meeting and then rezone property later. He stated that the proposed zoning amendment, along with the Overlay District, is consistent with the 2011 Comprehensive Plan.

Bill Konyha, President and CEO of the Regional Chamber of Northeast Indiana, reviewed statistics he had presented at the previous meeting related to agriculture's contribution to the economy of Whitley County, taken from the USDA Census of 2012. He stated that updated statistics taken from STATS Indiana, show that from 2012 to 2017, revenue generated from agriculture in Whitley County nearly doubled to nearly \$100 million. He stated that agriculture makes up 8.2% of the county's total workforce. He stated that there are appropriate, responsible and sufficient regulations in place at the state level that do not stifle business from growing and operating and implementing additional regulations could make operating business more difficult and should be done with great caution.

David Heckman, 3455 W. Shoreline Drive, Columbia City, representing Goose Lake Association, asked the Commission to consider protecting all of the natural resources of Whitley County and the tax revenue that is generated from the many nice summer lake homes. He submitted photos that were passed before the Commission demonstrating flooding close to Goose Lake and the recently approved AGP property.

Ken Perkins, President of First Farmer's State Bank, Converse, stated he represented agricultural clients. He stated that CAFOs are not the contamination issue that people believe it is and there are more spill issues with smaller operations. He stated that the farmers in this community are raising their kids and drinking the water, right along with the other residents and it is important to have dialog about where the next generation will farm.

Jim Federoff, attorney with Carson LLC, 301 West Jefferson Boulevard, Fort Wayne, stated that he represented a group of Whitley County livestock farmers and property owners as well as the Indiana Agricultural Law Foundation. He thanked and commended the Commission and staff for the concise way the proposed amendment was drafted and the order of the proceedings. He stated that the Ag group has made many concessions, one being the setback distance of 660' as presented in section 5.21. He stated that setbacks in other counties cannot be compared equally to those in Whitley County as other factors are not equal. He stated that the 250' setback from property lines is unreasonable and unnecessarily restrictive and conflicts with existing setback requirements. He stated that the group he represents does not recommend adopting Section 5.23, the Overlay District and believes it is unnecessary as there are controls already in place restricting where CFOs can be, including rezoning property. He also stated that the proposed Overlay District does not include exactly where it would apply and proper notification was not given to create a specific overlay that applies to specific property. He concluded that his recommendation to the Commission tonight is to adopt the proposed zoning amendment, not to include the 250' property setback or Section 5.23.

Linda Zimmerman, 5747 N. 350 East, Columbia City, stated that she supported the Overlay District and is not opposed to CAFOs as long as they are in an appropriate location. She asked that the Commission take topography into consideration and measure the ½ mile setback from the EPA flood zone rather than the lake.

Ronda Salge, 5465 N. 650 East, Churubusco, stated that Section 5.23 is more like a floating district than an overlay in that it delineates conditions before you assign it to a parcel. She stated that these types of districts are useful for future planning and gives developers flexibility. She stated that the drawbacks are undermining the concept of certainty, favoring private development over public interest, and infringing on agricultural land and she believes this could be the case with the proposed Overlay District. She concluded by reading an email that she submitted to the record.

Joe Lopez, 5300 N. 250 West, Columbia City, stated that although he did not see the photos submitted by Mr. Heckman, the issue is a drainage issue and flooded most recently due to the amount of rainfall. He stated that the Drainage Board is working on the issue. He cautioned the Commission against making a decision or reacting based upon fears expressed by a group of people rather than as a result of a known problem. He stated that a decision should be made with the younger generation in mind and how they will be affected.

Trisha Hinen, 4450 N. State Road 9, Columbia City, stated that she has given a lot of thought to answering the question of what problem needs to be solved. She stated that there are approximately 28 CFOs in Whitley County in current operation and under IDEM permit. She

stated that they are all family owned and operated, meaning that these families live and work here. She stated that there has been a lot of conversation about the fear of what could happen and she has yet to hear from any neighbors that have complained about real issues such as noise, water, odor, vermin, insects. She stated that the agricultural community has a good track record as Mr. Wagner (Health Department) previously pointed out and they have agreed to the staff proposal with a few modifications. She stated that she understands that regulations need to be in place and asked the Commission to consider the family operations at stake when deciding upon those restrictions.

Mr. Wright closed the public hearing. Attorney Boyd stated that she reviewed the public hearing notices and advised the Commission they could decide on the text amendments yet specifying where the Overlay District would apply would be similar to a zone map change and would require additional notification.

Mr. Wolfe asked Mr. Bilger what setbacks would be in place in the RR district. Mr. Bilger referred to Section 5.21 CF:03: Development Standards C. and D., explaining that for Class 2 and 3 CFOs that are located within ½ mile of an RR district, the BZA would address appropriate construction conditions and buffering measures.

Mr. Western asked for clarification on the three lots or more referred to in Section 5.22, Major Residential Subdivision Standards (RS). Mr. Bilger responded that these regulations would apply to existing platted subdivisions and all future subdivisions.

Mr. Wolfe stated that Class 4 CFOs require twice the distance from lakes, subdivisions and off-site residences and asked Mr. Bilger why the same was not applied to open drains. Mr. Bilger responded that the rationale is that the other distances address issues such as odor and aesthetics. Because IDEM requires CFOs to be zero-discharge, the likeliness of pollution reaching a water way is not affected by the size of the operation. He stated that in the case of an accident, however, a larger CFO might have a greater effect than a smaller one and this could be something to discuss and consider.

Mr. Wright asked if there was any further discussion or a motion. Mr. Western made a motion that the Plan Commission favorably recommend to the County Commissioners the proposed amendments to Chapters 3, 5, 10 and 12 of the Zoning Ordinance as presented by Mr. Bilger with the removal of the 250' property line setback (Option 2) and including the 660' distance from off-site residences (Option 1). Mr. Johnson seconded the motion.

Mr. Wright asked to clarify whether the motion included adopting the text of Section 5.23, Residential Development Overlay (RD), with a delay in defining where it would apply. Mr. Western confirmed this to be accurate.

Mr. Wright asked if there was any further discussion. Mr. Wolfe stated that the 660' separation should be measured from the property line because measuring from the residence could limit what an adjacent property owner (non-participant) could build on their property. Mr. Bilger stated that as proposed, the 660' separation is the distance for a *new* CFO from an *existing*

residence and not a restriction on a *new* residence from an *existing* CFO. Mr. Wolfe commented that this still affects the non-participant and can limit property use and value. He stated that he attended all of the Code Development Committee meetings and the two options that were discussed were a 660' setback or a 1320' setback measured from property lines. He stated that a 660' property line setback would protect home owners and their properties. Mr. Bilger discussed the minimum parcel size that is created using a 660' distance from a CFO barn. Attorney Boyd suggested using a distance of 400' from the property line *or* 660' from the nearest structure, whichever is greater. Mr. Woodmansee stated that he supports Mr. Western's motion as it was presented.

There being no further discussion, Mr. Wright called for a vote. The motion passed with a 7-2 vote with Mr. Wolfe and Mr. Mynhier voting against.

### **ADJOURNMENT**

Mr. Wright declared the meeting adjourned at 8:59 p.m.