

WHITLEY COUNTY PLAN COMMISSION
REGULAR MEETING MINUTES
WEDNESDAY, JULY 15, 2020, 7:00 P.M.

MEMBERS PRESENT

Thor Hodges
John Johnson
Mark Mynhier
Joe Wolf
Brad Wolfe
John Woodmansee
Doug Wright

MEMBERS ABSENT

Tom Western

LEGAL COUNSEL

Sam Ladowski

STAFF

Nathan Bilger
Mark Cullnane

VISITORS

Fifty-two visitors signed the guest list at the July 15, 2020 Whitley County Plan Commission meeting. The original guest list is kept on record in the Columbia City/Whitley County Planning & Building Department. Sixty individuals registered for the online webcast, with fewer actually “attending” the webcast. The list of online registrants is kept on record in the Columbia City/Whitley County Planning & Building Department.

CALL TO ORDER/ROLL CALL

Mr. Wright called the meeting to order at 7:03 P.M. and led the Pledge of Allegiance.

CONSIDERATION AND ADOPTION OF THE MAY 20, 2020 AND JUNE 17, 2020 MEETING MINUTES

The minutes of the May 20, 2020 and June 17, 2020 regular meetings were presented for approval. Mr. Wright asked the Commission if it had any comments concerning the minutes. Hearing none, Mr. Wright asked for a motion on the minutes. Mr. Johnson made a motion to approve the May 20, 2020 and June 17, 2020 minutes as presented. Mr. Woodmansee seconded the motion. The motion passed unanimously.

ROLL CALL

Mr. Ladowski read the roll call with all members present and absent listed above.

ADMINISTRATION OF THE OATH TO WITNESSES

Approximately 22 members of the public who were attending in person were sworn in by Mr. Ladowski. Mr. Ladowski stated that registration for the online broadcast includes an affirmation by the participant that any information he or she provides is truthful.

NEW BUSINESS

1. 20-W-SUBD-10

Mr. Wright stated that 20-W-SUBD-10 was continued to the August meeting due to lack of proper notice.

2. 20-W-SUBD-11

Stephen and Linda Tincher request primary plat approval of a 2-lot subdivision proposed to be called Tincher Resort Amended. The subject property is located on the west side of S. Raber Road, approximately 2,400' north of E. SR 114, in Section 31 of Jefferson Township. The property is zoned AG, Agricultural District, and contains approximately 10 acres.

Mr. Bilger presented the staff report. He stated that this petition was a replat of Tincher Resort, originally approved by the Commission in 2018. He said that the preliminary plat appears to comply with the development standards of the zoning code, and that some of the existing buildings do encroach into the required setbacks, but this would be legal nonconforming due to their age. He added that the plat proposes to split the existing pond, which would create encroachments into the required pond setbacks. He said that a 30' wide right-of-way for the county road was previously dedicated, and that 10' drainage and utility easements are shown on the perimeter of the lot.

Mr. Bilger stated that separate restrictive covenants were recorded with the original plat of Tincher Resort, and that, if petitioner wants them to apply to the replat, they should be recorded with the new plat.

Mr. Bilger presented aerial images of the subject property along with the preliminary plat. He compared the lot lines of Tincher Resort to Tincher Resort Amended. He reviewed staff's suggested conditions from the staff report. Mr. Wright asked the Commission if it had questions for Mr. Bilger. Hearing none, Mr. Wright asked the petitioner to address the Commission.

Steve Tincher, 10534 S. Raber Road-92, Roanoke, stated that he and his wife want to move the lot lines so that an outbuilding will be on the same lot as their new home.

Mr. Woodmansee asked Mr. Tincher about ownership and maintenance of the pond. Mr. Tincher stated that the pond is split between both lots and that there is an ingress-egress easement along the perimeter of the pond in Lot #2 so that he can continue to maintain the pond.

Mr. Wright asked the Commission if it had questions for Mr. Tincher. Hearing none, he asked the public if it had questions or comments. Mr. Bilger stated that no online attendees had submitted questions or comments via electronic means. Hearing no questions or comments from the public in attendance or those attending electronically, Mr. Wright closed the public hearing.

Mr. Woodmansee made a motion to approve 20-W-SUBD-11 with the following condition:

1. Secondary plat approval delegated to Plan Commission Staff.

Mr. Wolfe seconded the motion. The motion passed unanimously by a vote of 8-0.

OLD BUSINESS

3. 20-W-REZ-4

Brian Emerick requests an amendment to the Whitley County Zoning Map by reclassifying approximately 799.02 acres from AG, Agricultural District, to AGP, Agricultural Production District. The subject properties are located on the south side of E. State Road 14, west of S. 600 East, north of E. 900 South, and east side of S. 500 East in Sections 10, 15, and 22 of Jefferson Township.

Mr. Bilger presented the staff report. He discussed differences in intent, permitted uses, and special exception uses between the AG (Agriculture) and AGP (Agricultural Production) zoning districts. He presented a zoning map showing the subject properties and surrounding area. He reviewed the criteria that the Commission is required to take into consideration when considering zoning map changes. He presented the land classification map from the current Comprehensive Plan and discussed the AG and Transitional AG land classifications and how they relate to zoning districts. He presented a map detailing the number of single-family home permits issued in Jefferson Township from 2008-2020.

Mr. Wright asked the Commission if it had questions for Mr. Bilger. Hearing none, Mr. Wright asked the petitioner to address the Commission.

Brian Emerick, 5645 E. State Road 14, Columbia City, stated that his request to rezone approximately 799 acres from AG to AGP results from his family's wish to protect prime agricultural land and contemporary production farming practices in Jefferson Township. He said that this petition considers an area smaller than a similar proposal (19-W-REZ-2) that received an unfavorable recommendation from the Commission in 2019. He addressed opposition from other landowners in Jefferson Township.

Mr. Wright asked the Commission if it had questions for Mr. Emerick.

Mr. Wolfe asked Mr. Emerick to explain why AGP zoning is preferable to AG zoning for these properties. Mr. Emerick stated that contemporary production farming practices are threatened by the encroachment of residential development in Jefferson Township and argued that such farming practices should be protected. He stated that farming is a business and that his family has invested much time and money toward improving the agricultural productivity of the subject properties along with other properties in Jefferson Township.

Mr. Wolf and Mr. Emerick talked about the cost of installing drainage tiles. Mr. Emerick stated that it costs about \$1200-\$1500 per acre to install drainage tile. Mr. Emerick discussed drainage work he had done in conjunction with the County near the intersection of County Road 600 East and County Road 900 South.

Mr. Wolfe asked Mr. Emerick why he would not consider using deed restrictions to protect the agricultural nature of the land instead of seeking rezoning. Mr. Emerick stated that he was not

interested in deed restrictions and that he views deed restrictions as a compromise of the integrity of AGP zoning district. Mr. Emerick compared the AGP zoning district's protection of agricultural lands to the 2nd amendment protection of firearm ownership.

Mr. Hodges and Mr. Emerick discussed the protection and promotion of contemporary production farming practices in Jefferson Township. Mr. Emerick stated that it bothers him when a farm gets subdivided for residential development. He stated that he wants young farmers to have opportunities to pursue their chosen profession in Whitley County and added that he wants to promote that profession. Mr. Hodges asked for clarification of Mr. Emerick's statement that he wants young farmers to have opportunities to pursue farming, and asked Mr. Emerick if he intends to start a program to train young farmers. Mr. Emerick stated that FFA and 4H provide such learning opportunities.

Mr. Wright asked the Commission if it had additional questions for Mr. Emerick. Hearing none, he stated that, due to the large number of people who wish to speak, public comments would be limited to 3 minutes per individual and that those who are representing a large group would be limited to 7 minutes.

Bob Eherenman, 444 E. Main Street, Fort Wayne, stated that he is representing John Popp, a landowner of approximately 450 acres in Jefferson Township. Mr. Eherenman stated that the Commission heard a similar request in 2019, that it forwarded an unfavorable recommendation to the Commissioners, and that it should do so again this year. He said that this request is not substantively different from that presented in 2019 and reviewed statements made by Commission members during public hearings concerning that petition. He stated that the land was zoned AG when originally purchased and that the use has not changed. He questioned why petitioner would want to change the zoning if the use has not changed. He also questioned why petitioner would be opposed to recording a commitment that the land would not be used for large confined feeding operations (CFOs). He reiterated that his client is opposed to 20-W-REZ-4 and urged the Commission to forward an unfavorable recommendation to the County Commissioners.

John Enrietto, 8151 S. 700 East, Columbia City, stated his opposition to 20-W-REZ-4. He stated that he does not trust the petitioner to abide by statements that they would not place CFOs on their land when they refuse to make a written commitment stating they will not. Mr. Enrietto presented the Commission with a document outlining a proposed zoning district, AG-R (AG-Restricted). He refuted parts of the staff report and stated that the AGP district is wrong for Whitley County.

Doris Derheimer, 5621 S. 600 East, Columbia City, stated that she is in attendance on behalf of her father Stefan Mannes, 5625 S. 600 East, Columbia City. Ms. Derheimer read into the record a letter submitted to the Commission by Mr. Mannes that expressed his opposition to 20-W-REZ-4. [A copy of this letter is in the petition file.]

Nick Seslar, 5138 E. 700 South, Columbia City, stated his opposition to 20-W-REZ-4. He discussed agricultural uses in relation to land conservation. He said that he would like for the pastoral nature of the area near his home to be preserved and added that he wants the petitioner

to record deed restrictions or commitments to ensure that the properties will not be used for large CFOs.

Judy Kehmeyer, 8375 S. 600 East, Columbia City, stated her opposition to 20-W-REZ-4. Ms. Kehmeyer reviewed the intent of the AGP district. She stated that AGP zoning will be injurious to neighbors of the subject properties. She stated that AGP zoning of the subject properties will create conflicting land uses and that this directly contradicts §3.3 of the Zoning Ordinance. She discussed multiple studies that she claimed demonstrate negative health impacts on people living near CFOs.

Kurt Kehmeyer, 8244 S. 600 East, Columbia City, stated his opposition to 20-W-REZ-4. He stated that rezoning to AGP will by right allow larger CFOs than are allowed by right. He stated that placement of CFOs will reduce property values for surrounding owners of residential properties. He presented information outlining the number of homes in proximity to the subject properties and stated that most of these homes were already there prior to the petitioner owning the subject properties. He said that the petitioner is trying to dictate what happens in this part of Jefferson Township. He stated that petitioner has, in the past, expanded their business on State Road 14 when they had previously told neighbors that they would not do so, and that this is why many neighbors and other residents of Jefferson Township do not trust them when they say they will not operate large CFOs on the subject properties, yet refuse to record written commitments.

Alice Eshelman, 6755 E. 900 South, Columbia City, stated that she was speaking on behalf of her neighbors (Byron Lamm, John and Cindy McMillen, Don Stoltz, and Rick Fischer), her husband, and herself. She said that she is opposed to 20-W-REZ-4. She stated that the Commission had in 2019 forwarded an unfavorable recommendation regarding petitioner's proposed rezoning of the subject properties and that she hopes it will do the same this time. She said that she has submitted 325 signed petitions expressing opposition to 20-W-REZ-4. She questioned petitioner's refusal to record a commitment stating that the land would not be used for CFOs. She questioned the veracity of petitioner's statement that they are seeking the rezoning to preserve farmland. She stated that she believes petitioner is seeking the rezoning so as to be able to place larger CFOs on the subject properties than would be allowed under the current zoning. She said that placement of large CFOs on the subject properties would have catastrophic negative effects on surrounding property values. She asked the Commission to take into consideration the wishes of all Jefferson Township landowners, and not solely those of the petitioner. She asked the Commission if it would be better to table 20-W-REZ-4 until the ongoing update to the County's Comprehensive Plan is adopted. She requested that petitioner be required to record written commitments that large CFOs will not be allowed on the subject properties in the event that the rezoning is approved.

Diane Rice, 5141 E. 700 South, Columbia City, stated her opposition to 20-W-REZ-4. She said that three generations of her family are Jefferson Township residents. She stated that CFOs reduce the quality of life of nearby residents and the property values of surrounding properties. She presented materials supporting these comments to the Commission.

Linda Hoffman, 8120 S. Westfield Trail, Columbia City, stated her opposition to 20-W-REZ-4. She stated that, as a result of the primary defeat of two incumbent County Commissioners earlier

this year, any decision concerning 20-W-REZ-4 should be postponed until after January 1, 2021 when two new County Commissioners are sworn in to office. She said that this situation is similar to Senator Mitch McConnell's refusal to hold hearings related to the confirmation of Merrick Garland, President Obama's nominee to replace the deceased Justice Antonin Scalia to the United States Supreme Court until after the general election in 2016.

Mr. Bilger stated that anyone in overflow seating areas who wants to take a seat in the hearing room would now be able to do so, as some members of the public had left the hearing.

Ronda Salge, 5465 N. 650 East, Churubusco, stated her support for 20-W-REZ-4. Ms. Salge stated that the subject properties are highly productive for grain farming and that the AGP district is a farmland preservation zone.

Emily Studebaker, 5147 W. 200 South, Columbia City, stated her support for 20-W-REZ-4. She said that the AGP district is intended to preserve agricultural land.

John O'Connell, 1705 E. Bair Road, Columbia City, stated his opposition to 20-W-REZ-4. He said that the AGP district should be used sparingly and is intended only for intense agricultural operations. He questioned why petitioner would want to rezone the property if the use is not going to change.

Patrick Murphy, 1490 E. 200 South, Columbia City, stated his support for 20-W-REZ-4. He added that farmers are oppressed. He said that he is opposed to lawsuits against dicamba and to Aunt Jemima syrup changing its name.

Charlie Strack, 7363 S. 600 East, Columbia City, stated his opposition to 20-W-REZ-4. He said that he is concerned about the environmental and economic impacts on his property of intense agricultural operations. He said that the AGP zoning would remain even if petitioner sells any or all of the subject properties and that the new buyer could place large CFOs if it so desired. He stated that assessed values of nearby residential properties will decrease and asked the Commission to not solely consider the wishes of petitioner but to also consider those of the dozens of surrounding property owners who will be negatively impacted by rezoning of the subject properties.

Cody Rice, 5141 E. 700 South, Columbia City, stated his opposition to 20-W-REZ-4. He stated that petitioner's refusal to record written commitments that large CFOs will not be placed on the subject properties renders petitioner untrustworthy.

Joan Null, 8099 S. 200 East, Columbia City, stated her opposition to 20-W-REZ-4. She said that she is not opposed to preserving farmland but that she is opposed to CFOs.

Mark Johnson, 6906 E. 150 North, Columbia City, stated his support for 20-W-REZ-4. He stated that his family had property rezoned to AGP in 2019 and added that they have a CFO on that property. He said that the AGP district is not just for CFOs, but that it is intended to act as a means to preserve agricultural land. Mr. Johnson asked Mr. Bilger if the AG district allows CFOs by right.

Mr. Bilger stated that the AG district allows Class 1 CFOs by right and Class 2 CFOs by special exception.

Mr. Johnson reiterated that the AGP district is not solely about CFOs, but is about preserving agricultural land. He stated that his family pursued rezoning to AGP in order to prevent housing developments from encroaching upon their agricultural operations.

Brent Emerick, 5249 S. 500 East, Columbia City, stated his support for 20-W-REZ-4. He stated that a lot of the opposition to 20-W-REZ-4 is coming from outside of Whitley County. He said that he is concerned with residential development in the form of major subdivisions, and referred specifically to a 2019 attempt by Granite Ridge Builders to rezone a 60 acre parcel at the northwest corner of E. 700 South and S. 800 East to RR in order to construct single family homes. He stated that the farms involved in 20-W-REZ-4 are not going to change, but that what is changing are the land uses around them. He stated that the residential development constructed by developers like Granite Ridge Builders are inexpensive starter homes, and added that with this type of development comes increased traffic, crime, and trash blowing around. He questioned whether this type of residential development is what is wanted by the people of Whitley County. He stated that the County supports and educates young farmers through organizations such as the 4-H and FFA. He said that the farming community embraces teaching the next generation and added that the tile projects completed by his family are for subsequent generations to be able to continue farming the land.

Paul Mills, 1679 E. Bair Road, Columbia City, stated his opposition to 20-W-REZ-4. He said that, like others who had already commented on the proposed rezoning, he was a member of the Code Development Committee that helped to develop the AGP district. He said that, at the time, it was recommended to table discussion of residential code. He stated that residential code development was discussed in 2019, but it was recommended to postpone consideration of changes to the residential code until after the County's Comprehensive Plan update was completed. He added that the update to the Comprehensive Plan is ongoing. He stated that this (20-W-REZ-4) has got to be one of the largest attempts at spot zoning in the County's history. He said that there was much discussion of the AGP district in the Code Development Committee meetings and that the district is specifically intended for intense agricultural production. He stated that the most prudent decision would be to table consideration of 20-W-REZ-4 until after the update to the Comprehensive Plan is released and until after there has been serious discussion of residential development.

Mr. Wright asked if there were any other comments or questions from members of the public.

Mr. Bilger stated that there were questions and comments submitted online, but none specific to 20-W-REZ-4. He added that the questions included one about receiving audio of the meeting and one asking for instruction on how to get into the Government Center. The questions and comments submitted online are kept on record in the Columbia City/Whitley County Planning & Building Department.

Hearing no other questions or comments from the public, Mr. Wright closed the public hearing.

Mr. Bilger provided the Commission with a general reminder that it has three explicit options (favorable, unfavorable, or no recommendation) and one implicit option (continuation) concerning a recommendation on a proposed rezoning to the County Commissioners. He stated that, although the Commission is a nine member body, one member is absent and one seat, a Commissioner appointment, is not filled. He said that five of the seven attending members will need to vote in favor of a motion to have an official action.

Mr. Woodmansee stated that he voted against petitioner's proposed rezoning 19-W-REZ-2 because that proposal included properties east of County Road 600 East and that, when taking into consideration the current Comprehensive Plan, 19-W-REZ-2 created substantial land use conflicts. He stated that 20-W-REZ-4 is substantially different and that he is in support of a favorable recommendation.

Mr. Hodges stated that comments recently made by sitting County Commissioners regarding 20-W-REZ-4 were inappropriate in that they indicated preference concerning the proposal. Mr. Hodges stated that he is in support of no recommendation.

Mr. Johnson stated that the reduction in the number of properties and acreage proposed in 20-W-REZ-4 is substantial compared to 19-W-REZ-2 and that he is in support of a favorable recommendation.

Mr. Wolfe stated that he agrees with Mr. Hodges and that consideration of this proposal should wait until after the Comprehensive Plan update is complete. He said that he is in favor of forwarding no recommendation to the County Commissioners.

Mr. Wolf stated that the AGP is intended to provide a land use category for intensive agricultural production and that this category provides enhanced right to farm protections and supports agricultural economic development. He said that agriculture brings in roughly \$95 million to the county every year. He discussed the economics of operating a farm, specifically those of a grain farm.

Mr. Mynhier stated that the number of people in attendance who are in favor to 20-W-REZ-4 is substantial, but that he is not in favor of the petition.

Mr. Wright asked the Commission for a motion.

Mr. Woodmansee made a motion to forward a favorable recommendation on 20-W-REZ-4 to the County Commissioners. Mr. Johnson seconded the motion. Mr. Wright called for a vote.

The motion failed by a vote of 4-3, with Mr. Woodmansee, Mr. Johnson, Mr. Wolf, and Mr. Wright voting in favor and Mr. Mynhier, Mr. Hodges, and Mr. Wolfe voting against.

Mr. Woodmansee asked Mr. Bilger if tabling the petition to next month is an option. Mr. Bilger stated that the Commission should discuss its options. The Commission discussed its options.

Mr. Woodmansee asked if there needs to be another public hearing if the petition is tabled. Mr. Bilger stated that there would need to be another public hearing if the petition is tabled.

Mr. Wright stated that the Commission's options at this point include sending an unfavorable recommendation or no recommendation to the Commissioners, or it could table the petition.

Mr. Johnson asked if sending no recommendation to the Commissioners required a vote. Mr. Wright stated that it would require a vote and that at least five members would have to vote in favor.

Mr. Johnson made a motion to forward no recommendation to the Commissioners. Mr. Hodges seconded the motion. Mr. Wright called for a vote.

The motion passed by a vote of 6-1, with Mr. Wolfe voting against.

Mr. Bilger stated that he would prepare the zoning certification letter for the Commissioners.

OTHER BUSINESS

Mr. Bilger gave an update on the progress of the ongoing update to the County's Comprehensive Plan. He stated that the Steering Committee met for the first time last week. He said that planning staff's work with the consultant, Planning NEXT, up to this point has been mostly background work, for example, compiling updated demographic and economic data to determine a baseline for the County and creating a base map. He said that the consultant is scheduled to come to the County in August for a tour and to meet with the Steering Committee. He added that the initial public input events are tentatively scheduled for September/October and that presentation of a final document for the Commission's consideration is tentatively projected for Spring of 2021.

ADJOURNMENT

Mr. Wright declared the meeting adjourned at approximately 9:01 P.M.