

**MINUTES
WHITLEY COUNTY PLAN COMMISSION
REGULAR MEETING
MAY 16, 2018 7:00 P.M.**

MEMBERS PRESENT

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

MEMBERS ABSENT

Elizabeth Deckard

STAFF

Nathan Bilger
Jennifer Shinabery

ATTORNEY

Dawn Boyd

VISITORS

There were 98 visitors who registered their attendance at the May 16, 2018 regular meeting of the Whitley County Plan Commission.

CALL TO ORDER

Mr. Wright called the meeting to order at 7:00 p.m.

ROLL CALL

Ms. Shinabery read the roll with those members present and absent listed above.

CONSIDERATION AND ADOPTION OF THE APRIL 18, 2018 REGULAR MEETING MINUTES

Mr. Wright asked if there were any additions or corrections to the April 18, 2018 regular meeting minutes. Mr. Western made a motion to approve the minutes as presented, seconded by Mr. Wolfe. The motion passed with a 7-0-1 vote, with Mr. Hodges abstaining.

OATH TO WITNESSES

Mrs. Boyd administered the oath to those present who wished to speak during the meeting.

NEW BUSINESS

18-W-SUBD-6 Kyle Walters, 34 Jeffrey Drive requested primary plat approval for a 3-lot subdivision to be known as Sheckler Acres. The property is located on the northwest corner of N. 250 West and W. Sheckler Road, more commonly known as 2630 W. Sheckler Road, Columbia City, in Section 25 of Richland Township, and is zoned AG, Agricultural District.

Mr. Bilger reviewed the staff report, explaining the specifics of the subdivision petition. He explained that platting is required due to the number of lots being created and their size. He referred to an aerial view of the property, explaining that there are three existing residences, including a grandfathered mobile home, and one created lot would be vacant. He reviewed the conditions recommended by staff and stated that the proposed plat does appear to be in compliance with the requirements and standards of the Subdivision Control Ordinance and the Zoning Code.

Kevin Michel, Walker & Associates, presented the request on behalf of the petitioner. There were no questions from the Commission. Mr. Wright asked if there was any public comment. There was none.

With there being no further questions or discussion, Mr. Hodges made a motion to approve the petition with the following conditions:

1. Change “Plan Commission Chairman” to “Plan Commission President”.
2. Secondary plat approval delegated to the Plan Commission Staff.

The motion was seconded by Mr. Wolf and carried with a unanimous vote.

18-W-SUBD-7 Whitley County Department of Redevelopment requested preliminary approval for the second subdivision of Lot #1 of Rail Connect Business Park. The property is located on the north side of E. 300 South, ¼ mile west of S. 600 East, more commonly known as 5635 E. 300 South, Columbia City, in Section 22 of Union Township, and is zoned IPM, Industrial Park/Manufacturing District.

Mr. Bilger reviewed the staff report, explaining the specifics of the petition. He explained that the site is currently unimproved with proposed Lot 1C having been graded and prepared for development. He explained the history of the plat and the projected development details for the site. He reviewed the conditions recommended by staff and stated that the proposed plat does appear to be in compliance with the requirements and standards of the Subdivision Control Ordinance and the Zoning Code.

Kevin Michel, Walker & Associates, presented the request on behalf of the petitioner, reviewing various details of the plat, including the easements. There were no questions from the Commission. Mr. Wright asked if there was any public comment. There was none.

With there being no further questions or discussion, Mr. Hodges made a motion to approve the petition with the following conditions:

1. Change “Plan Commission Chairman” to “Plan Commission President”.
2. Redevelopment Commission representatives would be President, Vice President, and Secretary.

3. Refer to correct the Covenants and Restrictions document in the Deed of Dedication, in lieu of “recorded together with this plat”.
4. Make reference to current railroad owner.
5. Secondary plat approval delegated to the Plan Commission Staff.

The motion was seconded by Mr. Western and carried with a unanimous vote.

18-W-SUBD-8 Michael Kinder and Sons, Inc. requested preliminary approval for the replat of Lot #30 in the secondary plat of the replat of Park 30 Business Center, Section 4. The property is located on the north side of E. Park Drive, approximately ¼ mile east of S. 400 East, Columbia City, in Section 16 of Union Township, and is zoned IPM, Industrial Park/Manufacturing District.

Mr. Bilger reviewed the staff report, explaining the specifics of the petition. He explained the history of the original plat and reviewed the expected development details. He referred to the aerial view of the site, showing the proposed creation of three lots, a dedicated right-of-way for a new public street cul-de-sac, and the buffering that will be required. He also mentioned the Development Plan that was recently reviewed for one of the lots, explaining how drainage would be addressed. He reviewed the conditions recommended by staff and stated that the proposed plat does appear to be in compliance with the requirements and standards of the Subdivision Control Ordinance and the Zoning Code.

Alan Tio, MKS, 5206 Decatur Road, Fort Wayne, presented the petition. He explained that this request is a response to growth and new development opportunities. There were no questions from the Commission. Mr. Wright asked if there was any public comment. There was none.

With there being no further questions or discussion, Mr. Johnson made a motion to approve the petition with the following conditions:

1. Change “Plan Commission Chairman” to “Plan Commission President”.
2. Revise lot numbering to use Lots 30, 31, 32, if those numbers are available in Park 30 overall.
3. Attempt to reduce the length of the subdivision name.
4. Refer to correct the Covenants and Restrictions document in the Deed of Dedication, in lieu of “recorded together with this plat”.
5. Secondary plat approval delegated to the Plan Commission Staff.

The motion was seconded by Mr. Hodges and carried with a 7-0-1 vote, with Mr. Western abstaining.

18-W-ZOA-1 Public hearing to consider the development of additions to the Whitley County Zoning Ordinance related to Agricultural and Residential uses.

Mr. Bilger reviewed the progress of the Code Development Committee and explained that there is no refined ordinance yet and tonight is the first opportunity for the public and the Commission

to provide feedback and recommendations to the Committee on the four alternatives that have resulted from the committee meetings. He reviewed the individual alternatives in detail, two that were produced by staff and two that were produced by committee members. He explained that one of the alternatives proposed by staff utilizes development standards to address issues and the other proposed a new zoning district to be applied to certain geographic areas intended for development in the near future. He explained that the two that were produced by some of the committee members has yet to be discussed by the entire committee. He recommended the public and Commission provide high-level feedback at this point on the alternatives and gave examples of what that would include.

Mr. Wolfe, chair of the Code Development Committee, stated he was looking forward to hearing input as to which alternative may fit best.

Mr. Wolf pointed out there may be unintended circumstances as a result of some of the suggested requirements, such as added expenses to the county.

Mr. Wright opened the meeting public portion of the meeting at approximately 7:55 p.m. There were 23 people who spoke.

Mike Williams, 8062 S. Westfield Trail, Columbia City, expressed concern about manure spread in the fields entering drains and into waterways and threatening the quality of water in the wells. He stated waste disposal should be addressed on an individual basis for all CFOs so as to not affect ground water.

John Enrietto, 8151 S. 700 East, Columbia City, stated that he has been a bike rider for years all over the country and one of the worst drives was in Ohio when he passed a CFO due to the odor. He stated CAFOs should be held to the same standards as industrial facilities are for human waste and suggested requiring a waste water treatment plan for all CAFOs. He asked that the growth in Whitley County not be stopped by allowing industrial scale waste generation.

Diane Igney, 311 E. Morsches Road, Columbia City, stated that she lives on Crooked Lake and is very concerned that the cleanliness of this lake will not be protected. She stated that she is concerned we are not being proactive and is wondering what will be required related to manure spreading to protect the County's natural resources.

Stephen Hancock, 1711 E. Bair Road, Columbia City, stated he did not understand why the proposals recommend either development standards or zoning districts rather than including both. He stated that he is speaking on behalf of a group of concerned citizens who recommend that the Plan Commission implement the 2011 Comprehensive Plan recommendations for new districts that preclude CFO/CAFO operation and formulate CFO/CAFO development standards for districts that allow these operations.

John Popp, 235 Pearl Street, Fort Wayne, stated that he has been a realtor for 51 years and owns a farm in Jefferson Township. He stated that from his direct experience, CFOs stop development and adversely affect residential properties. He stated that the County relies on growth and needs

to encourage residential growth in those areas that are not good for farming, such as eastern Jefferson Township.

Chuck Owen, 7544 N. Maple Lane, Columbia City, stated that he recently retired and moved to Whitley County because he wanted to live in a rural setting as well as on a lake. He stated that he is very concerned with the CAFO issue and feels comfortable with the proposal submitted by a sub-committee that supports everyone's interests. He stated that his request is that the Plan Commission put more weight on the collective wisdom of the Code Development Committee.

Rita Harness, 2319 E. Esterline Road, Columbia City, stated that she has been a lake resident for over 30 years. She presented to the Commission four pages of the Tri-lakes Watershed Feasibility Study that was completed in 1992 and explained this study was done due to concerns of lake quality. She reviewed the four principal objectives of the study. She stated that the Tri-Lakes Owners Association is starting to monitor the lakes again. She stated she urges the Commission to consider a study or at least to consider a minimum one-mile setback from the lakes.

Paul Mills, 1679 E. Bair Road, Columbia City, stated that he is a member of the Steering Committee formed in July 2017 which eventually led to the Overlay District and is currently a reserve member of the Code Development Committee. He stated that he is encouraged that the alignment of the current zoning code and the Comprehensive Plan is finally being factored into the BZA criteria for considering special exceptions. He stated that he believes Alternative A addresses most of the concerns but more explicit language is needed. He referred to the term harmonious, listed in Alternative A, stating that this term is not well defined and the Comprehensive Plan better defines appropriate adjacent land classifications. He stated that generic CAFO/CFO special exception criteria will not adequately address the problems and strongly recommends that specific be used. He stated that requiring all CAFO/CFOs to be special exceptions allows all property owners the right to speak. He reviewed some of the criteria that he, along with ten other members of the CDC have suggested should be required, such as disclosures, manure storage setback, minimum lot size, filter strips, ground water studies, and odor control. He explained that odor is the number one complaint and reviewed various ways the state has recommended to address this issue, along with rodent and insect controls. He concluded, stating that he believes Whitley County has a great opportunity to come together and create a good plan for this huge issue.

Richard Goodwin, 1629 E. Bair Road, Columbia City, stated that he did a water study from Catfish Lake to Shriner Lake earlier in the year. He explained that the acceptable parts per million for E. coli before a waterway is shut down is 200 and the water he tested and took to a lab in Fort Wayne was 1,475 parts per million. He stated that the Code Development Committee spent thousands of hours and concluded that the setback from a lake of 40 acres or more needs to be a minimum of ½ mile, yet this is not reflected in Alternatives A and B. He stated that while a larger setback is sensible, the proposed zoning ordinance should guarantee a setback of no less than ½ mile. He stated that Tri-lakes sewer district was put in to take care of human waste and asked why we would allow manure to ruin what cost millions of dollars.

Neal Schrimshaw, 3233 E. Colony Avenue, Columbia City, stated that the Whitley County Comprehensive Plan was approved following a great deal of research and public input. He stated that he is in favor of the 5-year review that is part of the plan, but is concerned that updating the Plan later this year or in 2019 would be done as a reason not to act upon the urgently needed Ordinances. He stated that the time to act is now and the action should be based on the 2011 Plan.

Emily Studebaker, 5147 W. 200 South, Columbia City, reviewed the letter and maps she had submitted to the Commission. She explained that the maps reveal that there has been far more residential development outside of the interim overlay corridor than in them, which poses the question: who is really in need of protection, residential or agriculture? She stated that the maps indicate that it is agriculture, due to the number of homes built in AG zoned areas and the number of new homes built within 1 mile of a CFO. She explained that the location of a CFO does not seem to hinder residential growth and there currently are few limitations placed on that growth in AG zones areas. She stated that limits should be considered to preserve the rural part of our community. She stated that there are currently 29 IDEM permitted CFOs in Whitley County owned by local families and the mentioned problems, such as odor and property devaluation, do not exist. She stated that according to IDEM's website, only 4 of the 49 IDEM violations in this County since her birth have been related to agriculture and there have not been any AG related violations in the last 8 years. She stated that the issue is coming from fear of people never having lived by a CFO, not neighbors. She concluded stating that farms, such as her in-laws' dairy farm, have increased to CFO size due to technology which betters the community and the environment.

Pat Murphy, 1490 E. 200 South, Columbia City, stated he is a member of the CDC and is a second generation farmer who has studied agriculture his whole life and manages the manure application for a relative's AFO. He stated that abundant food supply provides any nation or community strength, security and freedom. He stated that the Indiana Code declares that it is the policy of the state to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other agricultural products. He explained that we assume that an abundant food supply will always be there, yet population growth is growing at a faster rate, creating a very serious issue. He explained that from the year 1960 to 2013, we have gone from approximately 3 billion people on earth, with about 12 acres of arable land per person to 7 billion people with about 1.5 acres of arable land per person and the projected numbers for 2050 are 9.3 billion people, resulting in less than 1 acre of arable land to produce food. He stated that in addition, it is projected that by 2050, we will need to increase food production by 70% to prevent starvation. He added that the amount of bushels of corn in storage for our nation has reduced to 25% of what it was in the 1970s, even though we have doubled our production, which is only a month's supply before the next crop comes in. He concluded, stating that those trying to protect farm land are looking at those numbers and what is happening in this county is important.

Mark Johnson, 6952 E. 150 North, Columbia City, stated he is a member of the CDC and is a part of a 4th generation hog operation. He stated that animal agriculture has been a part of our county culture for generations, yet the amount of farms has greatly declined, giving the example that in 1940 there were 1600 swine operations and today there are only 52. He explained that

what has positively developed over the years is better technology for animal care and health, to manage odor, and precision application of manure. He explained that additionally, buildings are better designed for the health and safety of the environment, people and animals. He explained that CFO buildings are designed to be zero discharge facilities to manage the manure, resulting in manure only pulled out of the building to be applied at agronomic rates for nearby crops grown. He added that there are also increased regulations from the state and federal government. He showed maps from his operation, demonstrating the manure management plan followed to prevent over applying and that manure is a valuable organic resource used in place of commercial fertilizer. He stated that he is proud of the technological advances the agricultural community has made in this county and as a farmer, his land and animals are his top priority. He concluded that this county is fortunate to have a community of farmers that strive for environmental stewardship.

Brooks Langeloh, 818 N. Newport Run, Columbia City, stated that he is a neutral member of the CDC. He stated that good or bad, agriculture has changed in the past 30-40 years and it is time to change our zoning to match the changes. He explained that our current AG zoning covers a broad spectrum of every type of agricultural operation as well as residential, whereas there are three different residential classifications. He stated that he would like to propose an A1, A2, and A3 zoning that would be more specific to eliminate the unknown of what will be allowed and where and that would accommodate the currently varying types of agriculture ranging from traditional to heavy agriculture.

Brian Emerick, 5865 E. State Road 14, Columbia City, stated that Tri-lakes and a portion of Jefferson township are the 2 “hotspots” in the county where there are issues and is concerned that decisions will be made that will have affect the agriculture of the entire county. He stated that he is wondering if decisions could be made to address those specific areas. He stated that it seems to him that everyone is comfortable with ½ mile setback around the lakes. He explained that he agrees that there are areas of Jefferson township that are prime residential land; however, he and his wife have purchased over 1500 acres of land in this township over the years specifically because of its AG zoning designation and to protect large farms and keep residential development out. He stated that some of the proposed zoning restrictions will eliminate the possibility for a CFO in Whitley County and does not believe this is desirable. He pointed out that CFOs are maintained and regulated, whereas the same number of animals spread out among smaller farms are not. He stated that restricting zoning will negatively impact the value of agricultural land. He concluded, stating that farmers are entrepreneurs that are up against many risks and regulations and Whitley County should encourage their growth and expansion rather than placing further restrictions on them.

Joe Lopez, 5300 N. 250 West, Columbia City, stated that he has attended a few of the CDC meetings and his concern is that there is still division and he has not seen much progress. He explained that his operation has a ½ mile setback and he has not heard of any problems with that. He stated that he has heard a lot of comparison of Whitley County to other counties, but not neighboring ones. He explained that Kosciusko County would be a good county to compare to as they are 4th in the state for AG cash and they also have a lot of lakes. He stated he believes it would be good to look at these neighboring counties and see what problems and solutions they

have. He concluded, stating that there should not be so much division as Whitley County has always worked together and those who move here should also be willing to compromise.

Kevin Ousley, 4863 S. Raber Road, Columbia City, stated that in 2015 agricultural sales in Whitley County was 94 million dollars, second only to manufacturing as an industry. He explained that in his many years of preparing tax returns for farms in this county, 95-99% of that revenue went right back out, about 75% to local businesses. He concluded, stating that agriculture supports Whitley County.

James Federoff of Carson LLP, 301 W. Jefferson Boulevard, Suite 200, Fort Wayne, stated that he represents Whitley County Farm Bureau and the agricultural community. He stated that as there was not one specific proposal before the Commission to decide upon, he would like to offer some general observations on some legal principles. He explained that one of the proposals states that zoning ordinance amendments must be *consistent* with the Comprehensive Plan. He explained that the State Statue actually states that governmental entities should give *consideration* to the Comprehensive Plan for zoning ordinance amendments and this is not necessarily the same as being *consistent* with. He stated that another term that was used in one of the proposals was *harmonious* in relation to the Comprehensive Plan. He explained that using general terms in a zoning ordinance such as this is not advised. He asked the Commission to consider the time, cost, and effort it will take to rezone land if a new zoning district is created. He explained Home Rule and Preemption, specifically related to water quality issues and manure regulation, and asked the Commission to consider whether or not some of the proposed regulations dealing with these issues is already regulated at the State level. He then explained the equal Privileges and Immunities Clause and explained the Commission should also consider that any special regulations and monitoring that may be required of CFOs should also be required of other industrial uses that generate waste or hazardous materials. He stated that some of the proposed setbacks have the intent of limiting the number of CFOs in the County, rather than to protect the surrounding use, which is not a proper purpose. He asked the Commission to consider the possible legal expenses and other negative aspects of the proposed requirement of having all CFOs go through the special exception process. He concluded in stating that he believed a consensus amongst the CDC members would be very difficult given the strong emotions involved, but was grateful for everyone's time and effort.

Pete Eshelman, 6755 E. 900 South, Columbia City, stated that he is a member of the CDC and sees an opportunity for the County. He stated that he did not believe the purpose of the CDC was to come to a consensus, but rather to discuss varying ideas from people with different interests. He stated that he and his neighbors in Jefferson Township would like to continue to have the quality of life they enjoy now. He stated that the Comprehensive Plan was done well and is a great road map. He stated that with the Comprehensive Plan and the Overlay Ordinance, we are headed in a positive direction.

John Meister, 5995 S. Woodstrail Drive-57, Columbia City, stated that his wife is a 5th generation farmer and he is a 3rd generation farmer. He stated that they are blessed to live on a lake, but they are not anti-CAFO. He stated that he has attended twelve of the thirteen CDC meetings. He stated that on April 13, 2018, Mr. Wolfe led a roundtable discussion on the Overlay

and there was a large amount of agreement and consensus. He explained that the consensus related to the problem statement that formed the committee, which is certainty of land uses and the protection of property rights and allow for the opportunity for agricultural growth along with residential development. He stated that the Overlay District was well thought out and addresses this certainty of land use. He stated that Alternative C was well thought out, is not radical, is proven, and continues to establish this certainty. He stated that the proposed Alternative D does not accomplish the task and brings us back to the days prior to the Overlay. He stated that he believes what is needed is for the zoning map to reflect the recommendations of the Comprehensive Plan with a combination of meaningful, realistic development standards along with zoning districts. He stated that the result will achieve the goal of having both agricultural growth and residential development.

Ronda Salge, 5465 N. 650 East, Churubusco, stated that she is a member of the CDC, but was not involved with the development of either Alternative C or D. She stated that she wanted to present six considerations or requests: 1) do not create too many details; 2) rezoning will create confusion and agrees with the idea of creating sub-zones for AG; 3) residential development is desirable, but there must be careful parameters in place to not lose the rural character of the County; 4) there is growth of small plot farms, which can be done in areas that may be viewed as prime residential land and not ideal farm land; 5) the future generations are the ones that will be living with our decisions and we need to hear from the younger generation; 6) give specific direction to the CDC in order for the upcoming meetings to be productive.

Tim Dygert, 5945 S. Woodstrail Drive-57, Columbia City, stated that there has been a lot of discussion related to taking away property rights. He stated that Indiana's laws reflect two key principles. He explained that the first is the common law principle that a land owner's rights end when exercising them unreasonably interferes with the legal rights of others. He explained that the second is that property rights can be limited by government action including zoning ordinances for protection of the public well-being. He concluded that the assumption that property rights are being taken away when a county passes a zoning ordinance that limit where CAFOs can be located and imposes limits and standards on them for the protection of citizens is without legal basis. He stated that CAFOs are a public health threat and well known to create nuisances. He explained that there are decades of research confirming the risks to the environment, property values, and the quality of life in rural communities. He stated that IDEM leaves many of these threats unaddressed, most notably noxious odors, and it is critical that counties use their authority to enact ordinances that protect its citizens from these serious adverse effects, which will protect property rights, not take them away.

Brent Emerick, 5249 S. 500 East, Columbia City, stated that he has served as an alternate on the CDC and wants to speak on behalf of his generation. He stated that many in his generation have great opportunities for their careers before them and are close to making some huge investments because they care about Whitley County and its future. He stated that he would like to clear up some myths about CAFOs. He explained that technology has changed the way things are done and these facilities are zero discharge and every ounce of manure is placed where it can be beneficial. He explained that farms do not waste fertilizer as their crops need this valuable resource and the manure is not going into the drains, but is growing needed food for families to

eat. He stated that these decisions not only affect farms, but will affect local businesses as well. He explained that livestock is a great way for farms to diversify and it would be a shame to shut down generational farms.

Mr. Wright declared the public hearing closed at 9:15 p.m.

Mr. Woodmansee expressed gratitude to the CDC for their time and effort. He stated that he is aware that manure is an emotional issue; however, it is regulated by IDEM and the Indiana Office of the State Chemist for smaller operations and cannot be a part of our code. He explained that he would not like for every CFO to go through the BZA, but rather establish developments standards for where they should go. He stated that the current Overlay Zone provides middle ground as it expands the minimum standards and provides protection from our natural areas and would like to see something similar to that.

Mr. Western stated he would like for the CDC to keep in mind for their upcoming final meetings that the County has one decision to make and that is to decide where CFO/CAFOs are appropriate. Everything else, such as manure management is dealt with at the State level.

Mr. Bilger asked the Commission to comment on their thoughts regarding using development standards versus a new zoning district or a hybrid approach.

Mr. Wright stated that his thought would be to use a hybrid of both.

Mr. Western stated that the temporary Overlay has received compliments and is a good place to start.

Mr. Mynhier stated that he is impressed with the presentations and the variety of options. He explained that he would like more discussion and time to think about whether to use a new zoning district and/or development standards.

Mr. Wolf stated that he would like to take time to look at all of the ideas and not make a rash decision, as the decision will affect all of Whitley County. He stated that everyone has to live together and depend on each other.

Mr. Hodges and Mr. Wolfe stated they did not have any comments at this time.

Mr. Johnson stated that he concurs with what has been stated and he thinks a combination of development standards and changing the zoning is a good idea.

Mr. Bilger asked for comments on residential development regarding some of the suggestions in the Comprehensive Plan such as placing them near municipalities and utilities and preserving rural character and agricultural areas.

Mr. Wright stated that he would agree that residential growth should be in areas that are not ideal for farming, rather than prime farm ground.

Mr. Western asked how residential development in agricultural areas can be addressed without stopping growth.

Mr. Wright stated that one suggestion that was made that would at least slow down such growth was to place a limit of having to have 10 acres in order to build a home.

Mr. Wolf stated that there needs to be thought and effort into these decisions as everyone wants a piece of the country and agricultural areas are desirable to build homes in a rural setting. He stated that this was evident on the map provided by Mrs. Studebaker that shows all of the new homes that have been built in agricultural areas.

Mr. Bilger stated that all of the comments have been helpful and have provided the CDC with direction for their next meeting. He stated he agrees the decision needs to be well thought out and believes that will happen.

OTHER BUSINESS

There was no other business to discuss.

ADJOURNMENT

There being no further business to discuss, Mr. Wright declared the meeting adjourned at 9:28 p.m.

GUEST LIST

A signed Guest List is kept on record.