

MINUTES

POSEY COUNTY AREA PLAN COMMISSION

SPECIAL MEETING

**THE HOVEY HOUSE
330 WALNUT STREET
MT. VERNON, INDIANA 47620**

**NOVEMBER 25, 2019
6:00 P.M.**

MEMBERS PRESENT: Mr. Mark Seib – President, Mr. Larry Williams – Vice-President, Mr. Ron Fallowfield, Mr. Keith Spurgeon, Mr. Hans Schmitz, Mrs. Heather Allyn, Mr. Carl Schmitz, Mr. Kevin Brown, Mr. Barry Tanner and Mrs. Beth McFadin Higgins – Attorney, Mrs. Mindy Bourne –Executive Director and Mrs. Kathy Neaveill - Administrative Assistant

MEMBERS ABSENT: None

MARK SEIB: The first thing we would like to bring up off the table from the last meeting would be the BWXT and Countrymark allocation area. These are the two things we said we would table until this meeting. So we will bring it up from the table at this time.

CARL SCHMITZ: Mr. Chairman, I move that we take from the table the Countrymark resolution. Seconded by Hans Schmitz.

ATTORNEY BETH MCFADIN HIGGINS: At the last meeting, some representatives from Countrymark were present and had some questions about the process. We put Countrymark in touch with Joe Harrison, Jr., who represents Posey County, as well as Rick Hall, who is working with the RDC. Based on an email that I have received, Countrymark's questions have been answered. This order that you have before you tonight just confirms that this area is within the plan for development for the County as a whole. The RDC will have a public hearing that will be noticed in the newspaper before they take final action on the resolution. There is some minor verbiage that Countrymark has requested concerning their ability to file for incentives, if they so choose, which will go into the final resolution approved by the RDC. There are some individuals here from Countrymark, as well as Joe Harrison, Jr. What you have before you and the correction on the numbering will be corrected on the final as well.

JOE HARRISON, JR.: I am Joe Harrison, Jr., and I am with Massey Law Offices in Evansville. I am representing Posey County and the Posey County Redevelopment Commission with regard to this matter and another matter concerning BWXT, which we can take up after this. I have talked with Countrymark today. What the Redevelopment Commission will consider is some additional language that would essentially state,

should Countrymark file for tax abatement in the future with any regard to any improvements, real estate or personal property, the creation of this TIF Allocation Area will not be an impediment to that process. If the County Council wants to consider a tax abatement at some time in the future, that can certainly be considered and that language will be inserted in the Confirming Resolution and will be considered by the Redevelopment Commission on December 16 at 10:00.

ATTORNEY BETH MCFADIN HIGGINS: You have a motion in front of you. The only change in the proposal you had at the previous meeting, we have updated the date to today. Keep in mind that you are just indicating that it conforms to the plan of development for the County and that you approve that resolution with any amendments that may be made to it.

A motion was made in the affirmative by Carl Schmitz and seconded by Heather Allyn to approve the Resolution of the Posey County Redevelopment Commission Amending the Declaratory Resolution for the Black Township Economic Development Area (Countrymark Allocation Area). Roll call vote (9-0) Yes. **Motion approved.**

MARK SEIB: Now we move on to BWXT and the Allocation Areas as well.

JOE HARRISON, JR.: I would ask that the Plan Commission consider this particular order. Representatives on behalf of Posey County have reached out to BWXT. I do not think there is anybody here from BWXT. They did not get back with the financial consultant for Posey County with regard to this matter. We would put the same language that we had in the other one, in theirs just to be consistent, as far as tax abatements are concerned. We will add that to the confirming resolution. I would ask that the TIF Allocation for BWXT also be approved the Confirming Resolution and will be considered by the Redevelopment Commission on December 16 at 10:00.

A motion was made in the affirmative by Larry Williams and seconded by Keith Spurgeon to approve the Resolution of the Posey County Redevelopment Commission Amending the Declaratory Resolution for the Black Township Economic Development Area (BWXT Allocation Area). Roll call vote (9-0) Yes. **Motion approved.**

MARK SEIB: We will now move onto the proposed Wind/Solar Ordinance. There will be no public input at this time. I asked the Board members to give me a list of anyone that they wished to ask more questions or get more in-depth testimony. There were only three that were requested. Those three being Morton Solar, Po Co and EON. We got a lot more information, and the Board went through them this weekend.

CARL SCHMITZ: We received a letter on USI Letterhead stationery. I spoke to Aaron Trump and he stated that the University is not involved in this. The professor that sent it should not have used USI Letterhead stationery for his own opinion. We should disregard this letter.

ATTORNEY BETH MCFADIN HIGGINS: We have had a number of hours in both a public hearing last week and everything you have read through. I want to make sure everybody realizes that we are considering an amendment to the Zoning Ordinance. There is no application before this body. We are not talking about any particular site or project. This is an amendment to the Countywide Zoning Ordinance. I want to remind the Commission that you are a recommending body on a Zoning Ordinance. You will make a recommendation on the proposed Ordinance. It then will be sent to cities/towns and county that have signed on for Countywide Zoning. Some of the comments were concerning the members having a conflict of interest in what we are doing tonight. That is considering the Zoning Ordinance. The Indiana Statute requires that anyone that sits on the Commission must be a resident of Posey County. So right there that means that maybe all of you or the majority of you own real estate in Posey County. Information that has been brought to my attention, based on the fact that this is a recommendation of the Zoning Ordinance that you will be recommending to others, nothing has been brought to my attention that anyone has a conflict of interest. We are not making any final decisions, and there is no application or plan before you today. As far as the process, we have at this point—at a public meeting you had a draft of the Ordinance. You had received a copy of the draft Ordinance prior to that meeting. At that meeting there were some changes that were requested. You gave approval to publish that Ordinance that is what went out for public comment. Tonight you can take action, you were present at the meeting for public comment—every email from the date that it went live on the website until noon on Friday was given to you for your review. You can have discussion about it—your process at this point could be, you can make a motion to recommend the Ordinance as it is written—or if there are certain aspects that you have questions about. I went through all the comments and my notes from the public hearing, and I have items that were specific to this Zoning Ordinance and recommended either questions or changes. I have those in order of the Ordinance. We can go through any or all that you have questions about. I want to remind you that everybody had a chance to make an initial recommendation or changes back in October.

MARK SEIB: It is up to the Board. If we go through each one of them, then we will vote on them separately.

KEITH SPRURGEON: I would like Beth to run through her list, and if there are things she does not cover then we can discuss those questions.

RON FALLOWFIELD: I would like to hear from Mr. Morton about the solar section.

HEATHER ALLYN: I also would like to hear from Mr. Morton. I did some research on solar and feel like we need to make some changes.

BRAD MORTON: 4620 Weaver Rd., Evansville.

MARK SEIB: After we heard your statements at the November 20 meeting, we felt there were some questions. Could you please give us a little more of a definition of what you were trying to explain to us?

BRAD MORTON: The ordinance paints solar and wind almost in the same light, as if they are identical. They are not. To have these kind of fees and the presumption that solar is a bad thing and that it decreases your property value. This is simply not true. There are a lot of things in the ordinance that are bad for solar. An \$800 fee for anyone to put solar on his or her rooftop or barn is high. On page 20, 153.131 (H), "No solar panel may exceed 25' in height at its highest extended rotation." That is like you don't know the difference between a solar panel and a wind turbine. That does not make any sense. And then there is E right above that, "No solar panel may be located no less than 1,000' from any nonparticipating land owner property line." That would mean you could not install solar anywhere in Posey County if that was the case. That would pretty much eliminate almost 90% of every solar project in Posey County. Then the language where you guarantee property value. You are suggesting solar decreases property values. Solar increases property values by 4.1%. That data is out there across the entire United States. The only thing this is based upon is just a complete presumption that beauty is in the eye of the beholder. I can say solar panels are beautiful and someone else can say they are ugly. That is the only thing you are basing this ordinance on. Solar panels are beautiful and they preserve so many things about our planet and livelihood. I think this needs to be revisited to just eliminate the solar part. You are talking about two different things. We did actually install some of the first wind turbines in Southern Indiana and we installed the wind turbine at Haubstadt Community School in Gibson County and at the Log Inn Restaurant. Those were the first two in Gibson County. It was a battle to put those two up over ten years ago. I am not going to get into the wind fight today. I just want to talk about solar. I really feel you should take the solar out of this ordinance.

LARRY WILLIAMS: I am not disagreeing with what you are saying. We did not go into this with the intent of disallowing either of them. That was not the purpose. We can go back and look at the ordinance.

ATTORNEY BETH MCFADIN HIGGINS: The only solar project that would apply to it would be a Tier 1, the large solar farms. The property guarantee applies. A couple of things would have to happen. Number one, the company that has the project would have to seek some type of tax incentive. Then if the County decides, along with the Economic Development organization and the Commissioners that they want to use the property value guarantee, then this is the form they would use. The property value guarantee is there as a format and show the process if they choose to invoke that, but it is not required.

MARK SEIB: We do not have the ability to handle the taxation. That is handled with the County Council. That was put in there so that the Commissioners can, if they choose,

apply that property value. The other issue is the 25' height. Hans brought it to my attention this week. I spoke with a solar committee member at Purdue and they are currently looking at putting solar panels up so they can farm underneath of them. So the 25' height is, for the most part, not going to be tall enough. Since the meeting on Friday, they have now shifted that they are exploring putting solar panels up along the property edges, fencerows and those kind of things. The new type of panels will allow sunlight to filter through. There is a lot of new research that has come into play and a lot more we need to be educated on as well. But the 25' height may not even be a fair estimate if that is what they are wanting to do in the ag industry. I think we need to leave the 25' in there, or something to that effect. They could then apply for a Variance and it would go through the channel of the BZA. The BZA would look at the height.

ATTORNEY BETH MCFADIN HIGGINS: Can you indicate the average height on a commercial solar panel?

BRAD MORTON: Average height is usually whatever the roof is. On a ground mount, it is about 10' height at the most. To have a system that is elevated above a farm is not really an economically feasible thing to do. We have built solar carports to cover parking lots.

ATTORNEY BETH MCFADIN HIGGINS: I just want to make sure a Tier 1, the 25', would not effect that.

BRAD MORTON: No, not unless it was on a barn. Normally we just put them on a flat roof and you are not going to see that. There is a lot of solar that people do not see on roofs.

HANS SCHMITZ: I just want to clarify that 153.121 (H) (2) does state that this ordinance does not apply to rooftop or integrated solar installations on buildings or facilities.

ATTORNEY BETH MCFADIN HIGGINS: So the only thing the 25' is talking about is a commercial land based. So it is not going to apply to Tiers 2 and 3 which are individuals that are wanting to install solar on their Morton Building or that type of thing. It does not sound like the 25' will be an impediment.

Section E, 1,000' from any nonparticipating landowner property line. Again, this is going to be those commercial solar farms.

HEATHER ALLYN: I still feel that is an extreme distance. Agriculture operations are looking at the possibility of putting solar at the perimeter so they can farm the center. So if you are saying it has to be put 1,000' from that property line, that is not going to help our agricultural community at all. When I looked up standard setbacks, they were nowhere near that range. Can you speak as to what your feel a setback should be?

BRAD MORTON: I think it should be reasonable. It looks very similar to a fence. Why should it be any different from a fence? It is not any uglier or beautiful.

CARL SCHMITZ: Do they use them as fence rows? I would personally like to see a 16' to 20' buffer that could be mowed around along property lines. This would keep the property lines clean. Other than that I do not see where it is hurting the neighbor at all.

HANS SCHMITZ: In 153.127 (D) page 13, it does require a 25' planted buffer.

BRAD MORTON: We were involved in two solar projects in Vanderburgh County, one being at the Oak Hill Cemetery. It took a long time to develop. We have not had one complaint. It has improved the neighborhood. It has approximately a 20' buffer.

MARK SEIB: I would be worried that you could not get around it with a piece of equipment to mow with a 20' buffer. I feel it should be a little bigger than 20'.

BRAD MORTON: I believe the landowner should be able to handle that with whatever equipment he wants to purchase to maintain the land.

MARK SEIB: Does anyone feel we should bring the 1,000' down?

KEITH SPURGEON: Would 25' allow for the equipment?

MARK SEIB: It just depends on the size of the equipment.

BARRY TANNER: What is the standard setback?

MINDY BOURNE: The standard is 15' on the sides and 25' in the front.

BARRY TANNER: Some of these solar panels can be 10' tall. That is like a giant building right next to the neighboring landowner. Even if there is a buffer, something like that is kind of a large industrial building.

HEATHER ALLYN: Wouldn't we have a different restriction if it were a building? A pole barn can be 15' from the line and side yard and 25' from the front. It would be taller than 10' and it does not have to be 1,000' from the line. We should not have to make it 1,000' to put a solar panel.

ATTORNEY BETH MCFADIN HIGGINS: This 1,000' was nonparticipating. If it is a participating and they want to use it and it fits all the requirements, they will be able to utilize their property for that.

LARRY WILLIAMS: If we think 1,000' is too far, can we put it at a more reasonable number? Could they also go back and ask for a Variance if need be?

ATTORNEY BETH MCFADIN HIGGINS: We would need to specifically state that this is allowed by Variance. This is already subject to a Variance. In this ordinance we have said these are the things that they can ask for a Variance.

MARK SEIB: If they can ask for a Variance then that should take care of that, unless you want to lessen the 1,000 feet. These are for large solar farms.

CARL SCHMITZ: Are most solar farms fenced?

BRAD MORTON: Yes.

BARRY TANNER: This is for the Tier 1 farms over twenty acres.

CARL SCHMITZ: We need to take boundaries out; drop the landscaping.

RON FALLOWFIELD: Since it has a fence, I agree.

ATTORNEY BETH MCFADIN HIGGINS: In the current Ordinance if a normal manufacturing abuts a residential district it requires screening.

Carl Schmitz made a motion to remove landscaping 153.127 (D), Heather Allyn seconded the motion. Roll Call Vote (9-0). Motion carried.

Heather Allyn made a motion to reduce 1,000 foot to 100 foot setback 153.131 (E), Carl Schmitz seconded the motion. Roll Call Vote (9-0). Motion carried.

The Board discussed the proposed \$800 fee with the Board suggesting changing it to a \$75 fee.

Larry Williams made a motion to change Solar Tier 3 fee from \$800.00 to \$75.00, Ron Fallowfield seconded the motion. Roll Call Vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: These were comments made that specifically referred to an ordinance, or I could link them to a specific ordinance. The first one is 153.126 (D), site plan. Someone requested that be amended that all primary structures within a half mile be on the plan. Right now it is within a quarter of a mile.

The Board passed on that.

ATTORNEY BETH MCFADIN HIGGINS: 153.126 (E) – This is coordination with applicable entities. This was a chart on page 9 of 25. The only one noted was the Doppler (NOAA). It is the second one on the chart listed under FAA. The comments

included things like the agreement that there would be a no build zone, which is 2.5 out from the Doppler to the ultimate request that there would be no wind turbine within the no build zone, mitigation zone and the consultation zone. Which would take it out 22.4 miles from the Doppler. So really you have the 2.5, the 11.1 which is kind of the mitigation zone, and then 22.4. So you had requests for all of those. Basically the request was to be specific. We do not sit on any of these boards, so we don't know what they are going to say. When the Committee was going through it – they need to have compliance letters and/or letters of impact. This is coming through Site Plan review. Every case will be taken up on its own merits. Whatever the letter says – they don't get a pass – it is something to be considered. The Doppler was probably the number one --- we will get into landing strips later. They wanted to be more specific, not build in a no build zone, more specific—they could not place the wind/solar in the no build mitigation or consultation zone.

The board discussed Section 153.126 (E) and Barry Tanner made a motion to change the language from coordinate to mitigate siting, to mitigate radar interference or any other interference and add no turbines go within a 2 ½ mile radius of “No Build” zone determined by NOAA. Hans Schmitz seconded the motion. Roll Call Vote (9-0). Motion Carried.

The Board discussed this further and had Karsen Rumpf come forward to answer some of their questions.

Barry Tanner amended his motion for Section 153.126 (E) to change the language from coordinate to mitigate siting to mitigate radar interference or any other interference and add no turbines go within the “No Build” zone as determined by NOAA. Hans Schmitz seconded the motion. Roll Call Vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: Next is Section 153.126 (F) Visual Impact Evaluation Report.

The Board decided to make no changes.

ATTORNEY BETH MCFADIN HIGGINS: 153.126 (G) The Noise Evaluation Report. You had requests to measure to dwellings rather than just any part of the property or empty land. In addition, it was requested that the noise study be 24/7, 365 days to get an average. If they are conducting a noise study, how will it affect structures, specifically dwellings?

HEATHER ALLYN: Can we get both sides to address so we can get a little more clarification?

SCOTT FISHER: 5701 Stewartsville Rd., Poseyville. All the measurements we have asked for are from the property line. None was from residence.

KARSEN RUMPF: So how the Noise Evaluation Report is written is excessive. It is unreasonable to require preconstruction ambient and post construction compliance monitoring from every single nonparticipating property line. The current version measures sound levels at all property lines instead of the outer wall of the home. How this is written, it would eliminate 90% of the project area that we could place turbines. It is excessive, and we would request that these Noise Evaluation Reports be done from a dwelling in an occupied residence.

ATTORNEY BETH MCFADIN HIGGINS: So basically, in G they would be looking at changing the third line “at adjoining property line” and the fourth line up from the bottom where it talks about the property line receptors. That is what they are requesting to have changed.

RON FALLOWFIELD: I understand why they take the before evaluation, it is for a baseline. I also understand it takes a lot of time. You almost have to get a baseline to decide what 45 decimals would be. A running air conditioner is between 70 – 90 decimals.

HEATHER ALLYN: It would depend on the time of day you take the readings. There could be dogs barking, semis driving by or it could be a nice quiet place to be at the time. It would be hard to get a true comparison.

KEITH SPURGEON: Correct me if I am wrong, but our current language that says adjoining property line does not state where along that adjoining property line. The way it is now they could take a sound level on the back 40, which may or may not be the same as at my residence.

BARRY TANNER: It does not distinguish between participating and nonparticipating either, correct?

HEATHER ALLYN: Just as adjoining.

MARK SEIB: That is correct.

ATTORNEY BETH MCFADIN HIGGINS: And as far as the Noise Evaluation Reports, if you look at some of that, that is a term of art. There would be some industry standards in compiling that report.

The Board discussed this further. Scott Fisher and Karsen Rumpf came forward to answer some of their questions.

Keith Spurgeon made the motion for Section 153.126 (G) to change Evaluation Report be done from residents home if not allowed as close to residence. Larry Williams seconded the motion. Roll Call Vote (9-0).

BARRY TANNER: So this will basically allow people that aren't in favor of this wind farm to have it measured at their property line as opposed to their building.

ATTORNEY BETH MCFADIN HIGGINS: At a point on their property line closest to their dwelling, not the entire property line.

BARRY TANNER: Mr. Rumpf, where along the property line do you normally have the sensors?

KARSEN RUMPF: Usually when homes are located right off the road, we can take it from the road closest to that home. We put the sensors everywhere. It depends on the layout. We try to get them as close to the home as possible, within 15 to 20 feet.

ATTORNEY BETH MCFADIN HIGGINS: So we are changing it to the primary dwelling, or if permission for the receptor to be located at the primary dwelling is not granted, then from the property line closest to the primary dwelling.

BARRY TANNER: I still have a concern. That could be adjacent to the dwelling on the property line and the dwelling could be closer to the turbine than where they are measuring.

ATTORNEY BETH MCFADIN HIGGINS: So you are saying the dwelling could be closer than the property line?

BARRY TANNER: Yes.

ATTORNEY BETH MCFADIN HIGGINS: Then I would think nonparticipating would want the receptor at their dwelling and would give permission.

BARRY TANNER: So this report comes to the Planning Commission before final approval?

ATTORNEY BETH MCFADIN HIGGINS/MARK SEIB: Correct.

BARRY TANNER: Could the Planning Commission ask them at that time to measure at a different spot if we think it is unreasonable or unfair to the nonparticipating landowner?

ATTORNEY BETH MCFADIN HIGGINS: At that point you will have a specific project with specific locations.

MARK SEIB: And if we feel it has not been done in the correct way, we can ask for another evaluation. Beth, would you read the motion we have before us?

ATTORNEY BETH MCFADIN HIGGINS: 153.126 (G) in the second sentence it would say the report shall state the daytime and nighttime base-line noise level at the primary dwelling. Or if permission for the receptor to be located at the primary dwelling is not granted by the non-participating, then at a point on the property line closest to the primary dwelling. And then further down we would need to change some language to read property line receptors to just receptors.

HANS SCHMITZ: Do we need to specify non-participating landowner as opposed to adjoining?

MARK SEIB: So you are saying that if adjacent property owner is a leaser then there is no need to do the evaluation?

HANS SCHMITZ: Yes.

CARL SCHMITZ: I see no problem with that.

HEATHER ALLYN: So you are proposing to change that to primary dwellings on non-participating.

Hans Schmitz made a motion to amend the previous motion and change 153.126 (G) evaluation report done from adjoining primary dwelling or adjoining non-participating residential dwelling, Kevin Brown seconded the motion. Roll Call Vote (9-0). Motion carried

ATTORNEY BETH MCFADIN HIGGINS: We had a request on 153.126 (K) under Cost Reimbursement requesting that the cost...how it reads now is any cost that the County incurs in investigating this would be reimbursed by whoever is doing the project. So, we had a request that the County give a budget of anticipated cost, and they have forty-five days to pay rather than thirty and they would only want to pay those expenses which are mutually agreeable. My concerns are it will be difficult to forecast what those costs are until we get the plan. The thirty days versus forty-five I don't have an opinion on that. To only pay those costs that are mutually agreeable could end up with a zero payment. I suggest we leave it as is.

The Board discussed the proposed changes.

Larry Williams made a motion to make the following change to 153.126 (K) applicant shall pay within thirty days (changed to forty-five days) within submission of invoice. Kevin Brown seconded the motion. Roll Call Vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: This request is in Section 153.127 (E) Decommissioning Plan. You heard a lot of description and that upon decommissioning they would remove everything to a depth of eight feet. They would like to modify that from eight feet to four and a half feet.

The Board discussed the proposed change and the correction of the spelling of assurance (there was an extra s in the word) with Carl making the following motion.

Carl Schmitz made a motion concerning Section 153.127 (E) to correct the spelling of assurance and removal to minimum of five feet instead of eight feet depth. Heather Allyn seconded the motion. Roll Call Vote (8-1). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.127 (F) Construction and Operation Bond. This request is asking them to be able to self-insure rather than purchasing a 100% bond. Most of the time we require the bonds.

The Board discussed the request with no changes made.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.127 (H) about property guarantees. We previously talked about property guarantees, it is not a requirement, but it is something that would come into play if they would ask for any type of economic benefit. At that point, the County and local Economic Development organization would look at that, and may use a property guarantee. If they do, then the form is attached. You had two spectrums on that, the first to eliminate the property guarantees and the second was to require it for all non-participating landowners. The current Ordinance puts it right in the middle, and that would be decided on a case-by-case bases when we actually have an application.

There were no changes made to 153.127 (H).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.127 (I) enforcement. They just want specific language for who pays for challenges or violations and that came from both sides. If there were violations or if someone filed a complaint...they wanted us to put in basically if there were meritless complaints and somebody was out money then who would pay for that. If there is a violation, your current overall Ordinance provides for the collection of the County's cost including reasonable attorney's fees, if someone is found in violation. It was a request from both sides.

There were no changes made to 153.127 (I).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.128 (B) signage and contact. There will be one at every road intersection of the project area. That would be too many signs. They would like for a sign to only be located only near where a wind turbine will be located.

CARL SCHMITZ: Speaking for the Posey Country road department, every time someone puts a sign up we have to get someone out there with a weed eater. With Vectren and their gas posts we have estimated that it has cost Posey County a little over

\$10,000 in extra money a year. Fewer signs the better off we are in our highway department.

ATTORNEY BETH MCFADIN HIGGINS: I think the request there was the number shall be posted at every wind turbine service road at every public road.

LARRY WILLIAMS: Did I hear correctly that every wind turbine will have a fence around it? (No there will not be)

RON FOLLOWFIELD: Motion to only have at service roads to projected service roads. Carl Schmitz second motion. Roll call vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.129 (D) page 16 of 25 red warning tape. Requesting if they bore and encase that they relax and not use the red warning tape.

CARL SCHMITZ: Would it be able to be found by 811?

KARSEN RUMPF: Yes

MARK SEIB: Where tile intersections are at?

RON FALLOWFIELD: You could put dye in the concrete for when you bore into it. When they backhoe into it they will know it is a higher voltage. Could that take the place of the red tape?

KARSEN RUMPF: We have black and red casing to differentiate between wires.

BARRY TANNER: I'm concerned if they dig and not know that it is there. They need the warning tape. Leave it as it is.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.129 (C) drainage repair – must be completed within ten days and they requested 14 days.

CARL SCHMITZ: I see no trouble with 14 days. Heather Allyn second. Roll call vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.130 (B) on page 18 of 25 Tubular monopole type tower.

KARSEN RUMPF: We use tubular monopole wind turbine. We do not know what type or size but all turbines are tubular monopole type towers. No change.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.130 (D) depth of cover. They request a relaxation of cover from 5 feet. All collectors should be placed in the ground no lower than 5 feet.

BARRY TANNER: As long as it meets local and state electrical codes, it should be fine.

MARK SEIB: Would the collectors only be on leased property?

KARSEN RUMPF: Yes

Barry Tanner made a motion to strike 2nd sentence in 153.130 (D). Motion was seconded by Larry Williams. Roll call vote (9-0). Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.130 (H) warning lights. All lights be Dark Sky certified. Make it abide by FAA requirements. We have more than FAA requirements. Leave it as it is.

There were no changes made to 153.130 (H).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.130 (I) decibel – They request the 32-decibel reading and the company requires 45. They will measure at the residence not the property line. 45 vs 32.

CARL SCHMITZ: How did you come up with 32?

MR. FISHER: We sourced a number of studies. The 32 number is in reference to sleep. 10% of every hour should be no noise.

ATTORNEY BETH MCFADIN HIGGINS: The 10% and 32 was combined.

BARRY TANNER: The 10% sound cannot exceed 45 decibels.

LARRY WILLIAMS: How do you measure it every hour?

ATTORNEY BETH MCFADIN HIGGINS: We have to have a complaint.

There were no changes made to 153.130 (I).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.130 (J) Flicker Amendment – any nonparticipant should have no flicker, as opposed to the 30 hours in a year. Should have 0 flicker.

KARSEN RUMPF: Shadow flicker is not an excessive thing. It is not 20 minutes a day – certain times of the year. It might happen for a week or two. With the setback from a house is 30 hours is industry standard.

BARRY TANNER: 30 hours over a year is not much. Non-participating homeowners do not want to be bothered even for 30 minutes out of the year with shadow flicker.

HEATHER ALLYN: To eliminate the shadow flicker, is that the placement of the turbine?

KARSEN RUMPF: Yes, placement of turbines lining up west or east with homes.

Barry Tanner made a motion to limit shadow flicker to 0 for all non-participating residential dwellings. Motion was seconded by Kevin Brown. Roll call vote (5-4) Heather, Hans, Keith, and Larry - No. Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.131 (A) use of right away – limiting the commissions that no part can be constructed in prior right of way. Want to add “shall not be reasonably withheld”. I would like to leave it as it is.

There were no changes made to 153.131 (A).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.131 (B) – turbine setbacks. It is currently at 2.5 times the height of the blade at its highest point. RWE 1.1 nonparticipating line at 1.5 8 times. Measured from the tip of the tallest blade.

LARRY WILLIAMS: 2.5 is a good compromise.

ATTORNEY BETH MCFADIN HIGGINS: They can get a variance – nonparticipating and participating have to be in agreement.

BARRY TANNER: 1 ½ times 2 ½ times is safety oriented for like blade throw – hard to say that 2 ½ times will cover all turbines.

MARK SEIB: I would like to put in some kind of measure – for safety. All calculations should be done when they make them. Ask the developer to provide the minimum.

BARRY TANNER: We still need a minimum 1 ½ or 2 ½ or greater of – most turbines have maximum.

HANS SCHMITZ: Should this be in this as a setback or in the safety plan?

MARK SIEB: Setback

ATTORNEY BETH MCFADIN HIGGINS: You already have a greater of in here?

KEVIN BROWN: What is the history of a turbine throwing a blade?

KARSEN RUMPF: .03% across the board. We would have to look into the requirements.

HEATHER ALLYN: When researching, did you come across to anything similar?

MARK SEIB: No, we have not seen anything about calculating it with the engineer.

Barry Tanner made the motion 153.131 (B) no WECS Tower may be located less than the greater of (a) 2.5 times the height of the WECS tower including the blade at its highest point or (b) the manufacturer's recommended setback as determined by blade throw calculation per engineer to any non-participating landowner property line. Motion was seconded by Ron Followfield. Roll call vote (9-0) Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.131 (F) Municipal Setback – change to increase to more. Add schools, park and rec, and churches. Wave that – nothing done.

The next request is located in section 153.131 (G) - Substation Setbacks. 1,000 feet from any nonparticipant land, change to 1,500 feet.

KARSEN RUMPF: We would like for this to be treated like the other utility company. They want to be regulated just like them.

ATTORNEY BETH MCFADIN HIGGINS: We have regular setbacks.

Carl Schmitz made a motion to strike the whole paragraph in 153.131(G). Motion was seconded by Larry Williams. Roll call vote (9-0) Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.131 (J) page 20 of 25 – Private Landing Strips – Posey County wants a 1-mile setback. EON does not want any setback more than FAA requires. They would come to some agreement.

MARK SEIB: It could be used as a guideline

KEITH SPURGEON: If they cannot come to an agreement it would come back to us for an agreement.

Barry Tanner made a motion to add, "As may be updated" after February 26, 2014 in 153.131 (J). Motion was seconded by Hans Schmitz. Roll Call vote (9-0) Motion carried.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.132 (A) – Security Bond – Request to net out the salvage value. Updated the value routinely.

KARSEN RUMPF: 125% of the value and they want to change it to 100% of the value.

ATTORNEY BETH MCFADIN HIGGINS: It is re-evaluated every 5 years. No change.

There were no changes made to 153.132 (A).

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.132 (D) – Inspections – page 21 of 25. Who is going to be doing the inspections? The County Building Commissioners has requested a licensed professional engineer.

CARL SCHMITZ: Who is going to pay for these professional engineers?

KARSEN RUMPF: We do a six month inspection as part of the safety. Twice a year we will inspect all parts of the turbines.

LARRY WILLIAMS: Can we have access to the reports?

BARRY TANNER: We should not have to do the inspections.

ATTORNEY BETH MCFADIN HIGGINS: It could be amended that any project to supply inspections.

Carl Schmitz made the motion to change to two times a year the County Commissioners and Building Commissioner will receive certified inspections. The motion was seconded by Larry Williams. Roll call vote (7-2) Yes. **Motion approved.**

KARSEN RUMPF: We can abide by this.

ATTORNEY BETH MCFADIN HIGGINS: We can say “upon request”. We can do it at any time with reasonable notice.

CARL SCHMITZ: (withdrew motion), Larry Williams (withdrew).

Carl Schmitz amended the motion to say upon request of Building Commissioner and County Commissioners furnish a yearly report if requested. Motion was seconded by Larry Williams. Roll call vote (7-2) Yes. **Motion approved.**

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.132 (E) Complaints – Request from the company that the wind is the actual cause of interference. Applicant shall promptly resolve the complaint caused by WECS, added to the last line.

Ron Fallowfield made the motion to add “caused by WECS” after microwave transmissions. Motion was seconded by Hans Schmitz. Roll call vote (9-0) Yes. **Motion approved.**

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.132 (J) – Unsafe Structure – page 22 of 25. If there is a complaint of a public nuisance that it should be fixed within 12 months and they felt 12 months was too long of a period of time or be deemed abandoned.

RON FALLOWFIELD: Takes time to get parts in for things like this.

BARRY TANNER: If it is determined dilapidated, then the turbine should be shut down until it is fixed.

Already set in place and everyone is okay with this.

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in Section 153.132 (K) Noxious Weeds – Entire project site or entire area around it, ex: 300 acres.

CARL SCHMITZ: Roadway in and area around it if the farmer is not farming around it.

MARK SEIB: This falls under for both wind and solar. Change word in “project site”.

HANS SCHMITZ: Per Indiana code land owner has to take care of noxious weeds.

Larry Williams made the motion to strike paragraph (K). The motion was seconded by Ron Fallowfield. Roll call (8-1) Yes. **Motion approved.**

ATTORNEY BETH MCFADIN HIGGINS: The next request is located in section 153.126 (C) page 8 – Maps

Barry Tanner made the motion to change 10’ contours to 2’ contours. The motion was seconded by Ron Fallowfield. Roll call (9-0) Yes. **Motion approved.**

MARK SEIB: Now goes to County Commissions and Towns for approval or denied and/or suggested changes.

Ron Fallowfield made the motion to approve this ordinance with all of the changes made tonight. Larry Williams second. Roll call vote (8-0) Yes. **Motion approved.** (Carl Schmitz abstained)

ADJOURNMENT: Mark Seib made a motion to adjourn the meeting at 9:46 p.m.

Mr. Mark Seib – President

Mrs. Mindy Bourne, Executive Director