



LAPORTE COUNTY PLAN COMMISSION

Government Complex, 5th Level
809 State Street, Suite 503 A
LaPorte, Indiana 46350-3391
(219) 326-6808, Ext. 2591, 2563 & 2221
Fax: (219) 362-5561

Michael Polan
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES June 25th, 2024

MEMBERS PRESENT: Anthony Hendricks Joe Haney
 Rita Beaty Eric Pointon
 Harold Parker John Watson
 Deb Vance John Carr
 Earl Cunningham

OTHERS PRESENT: Doug Biege, Attorney; Michael Polan, Recording Secretary; Ashley
 Kazmucha, Administrative Coordinator; Mitch Bishop, County Planner

PLEDGE OF ALLEGIANCE

All stand for a moment of silence for fallen LaCrosse firefighter Ken Caldwell.

Joe Haney asked for a motion to approve the agenda.

Anthony Hendricks made a motion to approve the agenda as amended.

Earl Cunningham seconded.

All Approved. Motion carries 9-0.

Joe Haney asked for a motion to approve the May 28th minutes.

Rita Beaty made a motion to approve the minutes as presented.

Deb Vance seconded.

Earl Cunningham stated an outstanding job as always on the minutes. He appreciates it. The minutes are always very complete.

Joe Haney stated very good. Thank you.

All Approved. Motion carries 9-0.

Petitions

No Petitions were filed this month.

Old Business

No Old Business listed on the agenda.

New Business:

1. Review of an Updated Solar Ordinance Draft

Joe Haney stated they're moving right on to new business number one (1), review and update of the Solar Ordinance Draft. He knows Attorney Biege emailed this out several days ago. Hopefully everybody's had a chance to take a look at it. These are some of the changes that the Solar Committee came up with, as well as suggestions from their attorney and their County Planner, Mitch Bishop, as well. It's a pretty good collaborative effort. He'll open the floor up to anybody here on the board who has any comments or anything they'd like to discuss.

Anthony Hendricks stated they're looking at Doug for legal guidance on how they proceed.

Attorney Biege stated if the Commission's content with the language, the next step would be to instruct him to proceed because he need finalization language before they go forward. There is a typo in here and he'll repair that. I called SES ACMs or something like that, but he will fix that easily. So, the next step would be to set a date for a public hearing on the Solar Ordinance and the language, and then instruct him to do the legal notices by mail, and they'll do the publication by paper, and the next step would be having a public hearing. After the close of the public hearing, then the Commission can take a vote or make changes or amendments, but he needs to know if the Commission is good with the language and the changes they have. And if so, and by the way, much of the changes they have here, the things that they're adding, those were included in the conditions in front of the Board of Zoning Appeals for that grant. So, they have two and a half (2½) pages of conditions, and many of them were included here just for their information. He just needs a go, or if they want to change anything, let him know what the changes are, and then he can get to work on getting it noticed and set up for public hearing.

Harold Parker stated on the front page on the last whereas, the last sentence in it, he understands this to get up to SolSmart Gold status, but after that, he doesn't know why the rest of that sentence is there. This is a legal document and it's going to be in there forever. They don't need that.

Attorney Biege stated it was there in the first draft. That's why it's there now. It was not added. That's what they had the first time, first pass.

Harold Parker stated it caught him wrong about things there.

Attorney Biege stated whatever they want him to do.

Harold Parker stated he thinks they need a period after the status. What's the rest of that sentence do for anything?

Anthony Hendricks stated nothing.

Harold Parker stated nothing.

Attorney Biege stated just take it out.

Earl Cuningham seconded.

Harold Parker asked if they have to vote on every change?

Joe Haney stated they could just suggest as they go along and then make a motion at the end to change.

Attorney Biege stated yes, to adopt.

Joe Haney stated unless anybody opposed any of them as they go along here just so they are not voting a bunch of times here.

Harold Parker stated they bounced around for awhile on the percent of ground that can actually be put into solar in LaPorte County. He never saw anything about that. Is that in there?

Attorney Biege stated there's nothing in there. They had a conversation about this and he's not sure about it. If the elected officials want to go that way. He's not sure the Solar Ordinance is the place. He thinks that would be an adoption by the County Commissioners. because it's kind of a different issue. On the solar, it's more mechanical; they can go this high or they can have this much buffer space, but when they say the percentage of acres in the County that can be converted to solar, that's more of a policy issue. He would rather see the Commissioners tackle that subject because if there's an appeal of that, and there might likely be an appeal of that, that's a constitutional issue. He would rather not mix those two (2) issues with this Ordinance.

Earl Cuningham stated on Page 2 at the bottom, he wants to make sure he is right. The last couple paragraphs there mentions small-scale and large-scale. They're changing that from fifty-thousand square feet (50,000') to four-thousand square feet (4,000'). Is that correct?

Attorney Biege stated yes, that's what he had in his notes.

Earl Cuningham stated Page 2.

Joe Haney stated he is glad he mentioned that. Was that supposed to drop down to forty-five thousand (45,000)?

Attorney Biege stated he could have had a mistake in his notes. He thinks part of the intention was to reduce and to bring the level for SES down to a lower acreage so there would be more control and it would fall into those SES categories.

Earl Cuningham stated it seems like a tremendous. . .

John Watson stated it is forty-five thousand (45,000) instead of four hundred and fifty thousand (450,000), right?

Attorney Biege stated he thinks so.

Earl Cunningham stated so the blue line only goes through the zero (0) so forty-five thousand (45,000), he can live with that. He just thought it was an extremely high drop. Are they all in agreement then that it is forty-five thousand (45,000).

John Carr asked what was it originally.

Earl Cunningham stated fifty thousand (50,000). When he read the revision here, he thought it went from fifty thousand (50,000) to four thousand (4,000), but it's going fifty thousand (50,000) to forty-five thousand (45,000). That makes a difference.

John Carr stated not much.

Anthony Hendricks stated less than an acre.

Deb Vance stated it's just over an acre.

John Carr stated he knows there is discussion in regards to roof-top solar, like on a roof, and forty-five thousand square-foot (45,000²) really isn't that large for a roof-top solar unit.

Attorney Biege stated he is saying they are bigger than that.

Rita Beaty stated this says ground-mounted on this one (1).

Deb Vance stated it doesn't say roof-top.

Attorney Biege stated yes, ground-mounted.

John Carr stated okay.

Attorney Biege stated the way it is written, for a roof-mounted, it is basically the size of the building so they are not putting a limitation on square feet as long as it doesn't go beyond the building roof.

Michael Polan stated on Page 4, he has already discussed this with the Attorney, but to get it on the record because it is not on the copies that they have, Page 4 Number 6 under "All required agency comments, approvals, along with respective ordinance conformance. . ." they are adding at the end "and LaPorte County MS4 and corresponding SWPPP." The SWPPP stands for Stormwater Pollution Prevention Plan.

Harold Parker stated one (1) more time, real slow. That's a lot of meat to put in there.

Michael Polan stated they are adding the LaPorte County MS4 and corresponding SWPPP. A SWPPP is a document that is a Stormwater Pollution Prevention Plan. That is their suggested add to Number 6 on Page 4.

Earl Cunningham asked if it was Number 10 or just adding that in to the paragraph of 6.

Michael Polan stated they are adding that to the end of the paragraph.

Earl Cunningham stated okay. He likes the additions on Page 5 of N and O. Both of those are improvements he believes.

Joe Haney stated just for the public, as they're continuing going through this, the N and O that Councilman Cunningham referred to is the Building Commissioner has the authority to inspect any of the solar structures once every five (5) years at the expense of the owner of the SES, as well as transfer notification that any holder of an SES system must notify the Building Commissioner of any sale or change in ownership.

Attorney Biege stated on that last, on the change of ownership, they have to watch how they write it in the Solar Ordinance to make sure that they're legal and they're constitutional. However, in Bluestem, for example, a Special Exception generally applies to the owner. So, the function at the BZA level will force a Special Exception Petition so the BZA has an opportunity to look over and approve who the new owner would be because remember they have these bonding requirements, the pay in on the bonding requirements. He tried to make the process to ensure that somebody, and he believes the BZA is the proper entity to look at it, would make sure that the new company has the financial wherewithal to satisfy all the requirements from the original grant.

Joe Haney stated thank you.

Earl Cunningham stated Page 7 Letter F to correct the spelling on approved.

Attorney Biege stated please disregard all the typos. They hit all those. His assistant thought spell check works with edits and it doesn't so that's why they have so many typos, but they'll have all those fixed. Actually, they already do; Ashley went through it.

Joe Haney stated so F was screening buffering and the SES being required for any directly adjacent or next to any roadways or residential structures placing a natural screening as approved by the BZA. The next page, there's a lot of changes on there as far as fencing buffers, emergency contact signage, drainage infrastructure, repair of damage, gives timelines as well as some concerns as to electrical interference and continues on multiple nuances as far as addressing issues related to glare, the depth of items when they're buried, waste management disposals, agreements such as road use and repair agreements, decommissioning plans, and setbacks having to be agreed upon additionally by the County Commissioners prior to any permits being issued for a facility. It is a couple pages worth of changes here.

Attorney Biege stated most of the adds are from the Committee, their County Planner, and Purdue did a really good study on all of the Solar Ordinances in the State and they did like a graph so some

of these were missing from their first draft, which was their first draft so it's not uncommon. They had very little to work on when they did the first draft so that is where some of these others are coming from. The language he pulled from the sections of the Indiana Code that they didn't include in the Ordinance.

Earl Cunningham stated he thinks he speaks for the Board that all those improvements are all what they wanted.

Deb Vance stated she agreed.

Michael Polan stated the sections that Earl was just referring to, they have the term CSE systems as mentioned and they need to clarify that that is Commercial Solar Energy. He discussed that with the Attorney, it is just not on their copy. It would be another minor change.

Harold Parker asked what that means? Giving somebody name?

Michael Polan stated yes. In the change, they have a reference to CSE systems, but they want to make sure it is defined properly.

Harold Parker asked if that is another legal entity that they are dealing with.

Attorney Biege stated no. They want to make a distinction between residential and a solar farm basically. A CSE is basically a solar farm and they want some more restrictions on those; restrictions that aren't practical for residential applications.

Harold Parker stated that is something they are putting in.

Attorney Biege stated yes. That's included in the adds he just needs to set it out and define it better. That's all.

Michael Polan stated one last thing is the two hundred and fifty-foot (250') setback. They need to define from what. Is that from non-participating residences?

Deb Vance stated that's what she believes it said in there; the non-participating.

Attorney Biege stated he thinks that was the intention of it.

Michael Polan stated that's all he has.

Joe Haney stated for some of this and he knows that this was something they have talked about as far as distances so let's say that somebody's house is two hundred and fifty feet (250') from the back of their property line. They don't necessarily want that coming directly up to the edge of their property line. He knows they talked back and forth a few times with some folks and he thinks the general consensus, which they can flesh out now, the Solar Committee can expand this out now to the full Board, maybe two hundred and fifty feet (250') from the property line of adjacent property owners makes that a little plainer so they don't have an issue where there's vacant lots without a

house and they go right up to the edge of the property, something along those lines. That way, they have a more distinct barrier as opposed to whatever residence is there.

Ashley Kazmucha stated it cannot go up to the property line anyways. It has to adhere to the accessory structure setbacks of that zoning. So, if it is Ag, it has to be at least thirty feet (30') from the side line and fifty (50') from the rear. They can't go up to the property line no matter what.

Joe Haney stated okay.

Attorney Biege stated the new Indiana Statute that came out measured from the wall of the structure which he didn't like; it was unclear. It is much clearer to run it as a setback like they run all the other setbacks in the County rather than measure from somebody's garage. That is where they are varying from the Indiana Code, but he thinks this is much more clear and easier to administer.

Joe Haney stated okay.

Michael Polan stated he still needs clarification.

Joe Haney stated the setback would be from the property line of a non-participating property owner.

Deb Vance stated yes.

Michael Polan stated okay. Thank you.

Earl Cunningham stated when they say non-participating owners instead of residence, that gives them some protection if they have an empty lot and they later build a house on the lot. He thinks that's way better.

Harold Parker stated let's say they have some catastrophic thing happen and the outfit can't rebuild or can't come off it for some reason or another, how do they turn it back into agriculture? If they put it through bankruptcy, the judge will have say, but he is talking with a guy in Texas who had a catastrophic hail storm that ruined it and an outfit came in and bought the old stuff up, but they wanted to renegotiate all the contracts and slice them in half, in fact.

Attorney Biege stated they're not going to have any authority about what a bankruptcy court's going to do.

Harold Parker stated he doesn't know if it's bankruptcy or somebody else came in and bought the field.

Attorney Biege stated that's not going to happen unless the BZA approves it.

Deb Vance stated right.

Attorney Biege stated he can't speak for what they're going to do, but he can't see how they would. The Decommissioning Agreement is with the County Commissioners in the County. So, the BZA is

looking at whether it's appropriate to build and they're following all the regulations, but there's a written contract with the County Commissioners to pay for this, if there's a catastrophic failure or deconstruction. That money is there.

Joe Haney asked if there are any other questions or suggestions, additions, changes?

Deb Vance stated she thinks it looks good.

Earl Cunningham stated he commends the Committee.

Rita Beaty stated thank you very much to the Committee.

Joe Haney stated thank you. He appreciates that. They all worked pretty hard on it. They had quite a few meetings and he thinks everybody did a lot of time and effort and he thinks it shows. He appreciates that. Thank you.

Deb Vance stated thank you to Attorney Biege for all his hard work on this.

Joe Haney stated yes, absolutely and their County Planner Mitch Bishop as well. They were absolutely invaluable and a couple of them he hadn't thought of either so thank you.

Deb Vance stated absolutely. Great suggestions.

Joe Haney stated obviously the input they got from the public as well at the various listening sessions they had as well.

John Carr made a motion to approve the changes as presented.

John Watson seconded.

Joe Haney asked for any discussion.

Rita Beaty asked if they need to make the motion to include for Doug to go ahead and move forward with everything they've suggested for the public hearing and set a date and set up in the newspapers and everything like that.

Joe Haney asked if they want to include that in this motion or a second one?

Attorney Biege stated at least setting a date. All the requirements are statutory so he has to go through all of them anyway so he just needs authorization to proceed and a date.

Harold Parker stated that is what the motion is, correct?

Attorney Biege stated he would suggest they vote on the changes and then give him another motion to do that.

Eric Pointon stated he has a quick question. It may not go in this, he doesn't know, but he has a question about transmission lines. The transmission lines that are going hook to a main power source, he just doesn't want to see high line towers or something go across an adjoining property line that would, say that guy has an irrigation in that field or possibly potentially in the future would have an irrigator in that field, that would be a limiting factor.

Attorney Biege asked if he is talking about going outside of the lease property.

Eric Pointon stated correct.

Attorney Biege stated they don't have any right to do that anyway. They're going to have to negotiate some type of easement with that adjoining property owner. As far as controlling the types of lines, he doesn't know how or think they can do that in Ordinance because there's such a variety of what they may be putting on.

Eric Pointon stated he doesn't think so, but he didn't know. He knows they added those new ones from coming out of New Carlisle a few years ago. So, if that's what they are tying into and those went across all those properties of the solar farm; he doesn't want to see that.

Attorney Biege stated they cannot infringe upon any private rights, okay?

Eric Pointon stated right.

Attorney Biege stated so, if there's an existing easement, they can't pass an Ordinance that's going to affect that existing easement. If there's not an easement, then they're going to have to negotiate with the property owner to do what they're going to do and he's assuming compensate them.

Eric Pointon stated right.

Harold Parker stated four (4) years ago, they went and put another line right next to a NIPSCO line all the way through Plymouth all the way to New York.

Attorney Biege stated they can't do anything about that.

Harold Parker stated well, Indiana has no laws against that so they can build if they prove a need and put an I-line wherever they need it.

Attorney Biege stated yes and they can engage in eminent domain arguably. At the zoning level he doesn't think they can do anything.

Eric Pointon stated he didn't think they could do anything he just had a question on how that worked.

Attorney Biege stated it's a good point, but he doesn't think anything they do here would be enforceable.

Joe Haney stated a lot of that land runs under the existing high-tension lines that come right through that area anyway. Any other questions?

All Approved. Motion carries 9-0.

Joe Haney stated statutorily, what is the advertisement date? Is it ten (10) days for a public hearing?

Attorney Biege stated he thinks so, but he has to double check it. He needs at least thirty (30) or sixty (60) days. He prefers sixty (60) days because he has to get mail cards back. He has to send certified mail out so he would prefer sixty (60) days. Maybe the next Commission meeting then.

Earl Cunningham made a motion to allow Attorney Biege to move forward following all the statutory requirements.

Rita Beaty seconded.

Joe Haney stated with a tentative date of the next scheduled Plan Commission meeting?

Michael Polan stated August meeting.

Harold Parker stated he wanted August.

Attorney Biege stated he thinks they would be safer in August because he is concerned. The agenda from April for the Plan Commission; he just got that in the mail last week.

Ashley Kazmucha stated she does hand deliver them now because of that.

Attorney Biege stated he isn't criticizing her because she does mail them on time, but he wants more time to get the certified mail cards back in the mail. That's all. He would prefer the August meetings.

Earl Cunningham amended his motion to allow Attorney Biege to move forward following all the statutory requirements for the August 27th meeting.

Rita Beaty seconded.

All Approved. Motion carries 9-0.

Joe Haney asked if they have any more discussion on this before they move on to their last item or does that cover everything for everyone tonight?

Harold Parker stated that's all they had on the agenda.

Joe Haney stated they have one (1) more item, but under the Solar Ordinance Draft was there anything else anybody wanted to cover on that. He thinks they are probably good, but he wants to double check before they move on.

2. Review of a Large-Scale Solar Ordinance Moratorium Draft

Anthony Hendricks stated again, he is looking at Doug that this has to follow the same procedure and same thing. They instruct him to potentially put this on the August agenda.

Attorney Biege stated they only have two (2) cases to rely on and they both say they should follow the same procedure as they would in passing a zoning ordinance so that is his position. That is the safest position to take in the event it is challenged.

Joe Haney stated that makes sense. Obviously, it is the pleasure of the Board here tonight what to do with this. Considering they had a 9-0 unanimous vote here on the updates to the Solar Ordinance, it seems like there is a high likelihood that that will be adopted and passed in August. At the same time, if they want to continue on the same dual track just in case something comes up between now and then and still consider going down the path of a moratorium so they have both options available to them in August, that would be the pleasure of the Board. It's one (1) of those, whatever the Board is thinking and feeling type of thing.

Attorney Biege stated if he may add, just like the BZA just passed the grant on the current application, they have so many conditions on that; it essentially includes their revised Solar Ordinance so nothing is getting through without the BZA's review. The BZA has taken the position that nothing is getting through without the conditions. Just so they know, nobody is going to be able to slide anything through. It's not even a risk, frankly.

Harold Parker asked if he is trying to set dates on how long the moratorium is?

Joe Haney stated no. His point was, since they all unanimously agreed that they like the changes and they're moving forward with the Ordinance update, do they need to continue down the dual path right now? Do they want to have that as a backup option for August, just in case something happens between now and then? Then it's noticed anyway when the notice goes out for the Solar Ordinance? Whatever the pleasure is here, it's one (1) of those where they initially started down a path of trying to do both at once. That way, if they ran into trouble with the Ordinance, they still had the moratorium option until they could get done with the Ordinance, but it seems like if they've got a good solid Ordinance here, then do they still need to continue down the dual track?

Deb Vance stated she feels like since they have that agreement on the changes, of course they are going to have the public hearing, but they also have the conditions. To her, she thinks it might be something they don't need to pursue since they have that already laid out.

Earl Cunningham stated his position is just the opposite. It's just like an insurance plan. Between now and then, something comes up, and they can't pass what they just agreed on, then they still have the option of the moratorium.

Deb Vance stated but they also already have conditions in place with the one (1) they have so they are already still looking at the same thing when it comes to the BZA.

Earl Cunningham made a motion that they continue on the dual track and notice out for a Solar Moratorium at the August 27th meeting.

Harold Parker seconded.

Joe Haney stated again, this is giving them the option to be able to legally adopt one (1) if they needed to in August and then from there would have to go to the Commissioners and be ratified at one (1) of the meetings after that. Is there any other discussion?

Ashley Kazmucha read the roll.

Joe Haney stated aye.

Harold Parker stated aye.

Anthony Hendricks stated aye.

Rita Beaty stated aye.

Earl Cunningham stated aye

John Carr stated aye.

Deb Vance stated nay.

John Watson stated aye.

Eric Pointon stated aye.

Approved. Motion carries 8-1.

Anthony Hendricks stated that meeting is August 27th.

Ashley Kazmucha stated yes.

Harold Parker asked Anthony Hendricks if he was going anywhere.


Anthony Hendricks stated no. It's for the public to know.

Joe Haney asked if there is anything else before them here this evening. He would like to give a congratulations to their secretary Ashley for her nomination for Influential Woman of the Year and he hopes she gets it.

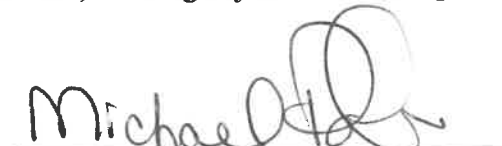
Harold Parker made a motion to adjourn.

Deb Vance seconded.

There being no further business before the Plan Commission, meeting adjourned at 6:35 p.m.



Joe Haney, President



Michael Polan, Recording Sec.