

# *WABASH COUNTY PLAN COMMISSION*

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## **WABASH COUNTY PLAN COMMISSION** **BOARD MEETING MINUTES**

July 6, 2017

Wabash County Plan Commission Board  
Wabash County Court House  
Wabash IN 46992

**Present:** Curt Campbell, Randy Curless, Scott Givens, Patty Godfroy, Doug Rice, Cheri Slee, Joe Vogel, Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook

**Guests:** Deanna Unger, Sam Unger, Sarah Lochner, Chris Lochner, Sheila Butcher, Glenn Butcher, Sandra Haggard, Leon Stout, Lena Gray, William Gray, Doug Lehman.

Board President, Scott Givens, called the meeting of the Wabash County Plan Commission Board to order at 7:00 p.m. Mr. Givens asked for a motion on the minutes from the May 4, 2017 meeting. Randy Curless made the motion to approve the minutes as written, this was seconded by Joe Vogel. Motion approved.

**Mr. Givens:** First on the agenda this evening is the Ron McCown Unsafe Premise Order. Mike Howard informed the Board that the property has suffered significant damage to one of the basement walls from recent flooding. Mr. McCown was told that no one could live there until repairs were made. Mr. McCown came in to the office to let us know that the structure will be razed. I informed Mr. McCown that he would not need to appear at the meeting tonight since he is in the process of having the structure removed.

**Mr. Givens:** The next item on the agenda is Legacy Ridge / Unger Mountain.

**Mr. Howard:** Board members have received a packet of information on the re-plat and for the Special Exception regarding the Legacy Ridge subdivision and Unger Mountain, LLC. Mr. Thrush has determined that more time was needed to review the information that was submitted by Mr. Lehman on behalf of Unger Mountain. Mr. Lehman brought the information to the Plan Commission Office on Friday, June 23<sup>rd</sup> in the afternoon. Copies of the document were mailed to members of the Plan

Commission Board on Monday, June 26<sup>th</sup>. Mr. Lehman e-mailed the documents to Mr. Thrush on the afternoon of June 26<sup>th</sup>.

Mr. Thrush, Mr. Guenin, Mr. Lehman, and I met for a brief discussion on Friday, June 30. It was determined to ask for a continuation. At this time I would ask the Board for a motion for a continuation on the applications for Unger Mountain and Legacy Ridge. Board member Curt Campbell made the motion to approve the continuance the motion was seconded by Joe Vogel. Mr. Givens asked if there was any further discussion, Mr. Lehman stated that just for the record he would like for it to be announced that the meeting will be at 7:00 pm on August 3<sup>rd</sup>. Mr. Givens; thanked Mr. Lehman for the clarification, the motion was passed by the members of the Board.

Mr. Givens: Next on the agenda is complaint updates.

Mr. Howard:

- ❖ The Shirley Marshall property located in the Town of Lagro. We filed an Unsafe Premise Order on the property, which was approved. The house has been razed, clean up is almost complete at this time.
- ❖ Kris Marshall property located in the town of Servia, complaints of garbage and trash. We filed on that, the Sheriff was unable to locate Ms. Marshall at that address. We gave the Sheriff's Department another address where she might be staying, however, the paperwork has not been sent from the Clerk's Office to the Sheriff's Dept. We are still waiting on that to be taken care of.
- ❖ GarMar or NorAg Grain (elevator at Speicherville), they have been taking in spoiled grain. We have been working on this since the fire that happened at the elevator last fall. There have been complaints of the odor, flies, etc. We have been working with the County Health Department on the issues there. Jennifer Scott has contacted the ownership of the business in Kansas. They are to have all the grain cleaned out, and because of the high fly and mosquito infestation they will be required to cover the property with Larvacide. They are supposed to have all the grain removed by tomorrow, July 7<sup>th</sup>.

Mr. Givens: I don't believe it has been done, so what would be our next step?

Mr. Howard: I will need to check with the Health Dept., they are in charge of the matter. The owner has asked for a couple of extra days due to the 4<sup>th</sup> of July holiday.

Mr. Givens: I have had numerous complaints on the elevator.

Mr. Howard: Next is the Ricky Newsome property in Speicherville. We have filed against Mr. Newsome and are waiting for the paperwork to be served.

Mr. Thrush: It was filed on June 22<sup>nd</sup>.

Mr. Givens: Do we need to be contacting the Sheriff?

Mr. Thrush: I took the paperwork to the Sheriff's Department today, paperwork should be served tomorrow (July 7<sup>th</sup>).

**Mr. Howard:** There are three properties not being mowed in the Troyer Bridge Estate area, these are vacant lots. For the second year in a row we have had to contact the property owners concerning keeping the property mowed. I received a call from one of the landowners, I explained to them that this is a platted area and they do need to keep it mowed. I informed them that they will not be notified again but they will receive notice from the courts.

**Mr. Howard:** The State DNR permit has been issued for the Wabash River Trail (WRT) bridge over Lagro Creek and the path to the end of Tipton Street. We will wait the 18 day waiting period, then we will walk that area of the trail and go through the drawings with the WRT before issuing our County permit, if it is approved.

**Mr. Givens** asked if there was anything else that anyone would like to bring before the Commission before we move on to our discussion of the new Ordinance?

**Mr. Glenn Butcher:** Mr. Butcher asked if the Plan Commission can clarify that the State DNR Permit that was issued was an After The Fact Permit for the bridge?

**Mr. Howard:** Yes it was.

**Mr. Butcher:** I would like for the county to look into doing a new ordinance to have a setback for something like the trail to protect our county residents. We have setbacks for buildings, satellite dishes, solar panels. I think we should look into this, I feel that no one should own property and have someone or an organization come in and set a path literally on the property line right next to their front door. If so, I would like for you guys to look into this to see what you guys could do, if so it would make a lot of the county people much happier. I am not sure if this is where I need to start with this or if I need to bring this up to the County Commissioners. We decided to come here tonight to see if you guys can come up with a plan to help us community guys out.

**Mr. Joe Vogel:** Do you have any recommendations on the setback distance?

**Mr. Butcher:** What is the standard setback on buildings?

**Mr. Howard:** In the Agriculture zone

Residential structure 25 ' from rear property line

10 ' from the side property line

Accessory buildings 10 ' rear and 6 ' side setback from property line

**Mr. Butcher:** How about agricultural structures such as a hog house or poultry structure?

**Mr. Howard:** The setback for a Confinement Building is 1,320 feet from a residential structure. The property line setback is listed at 300 feet, but we do allow a variance depending on the location. We would consider a variance from that property line setback. We have not had anyone request a variance from a residential structure that is not their own. I don't feel even if we did that we would ever allow the variance, that is my opinion.

Mr. Butcher: I personally do not feel that inviting anyone in the public 24 hours a day right by your front door or your swimming pool or whatever, I would like to see a pretty good distance. I will throw it out there 1,000 feet, then you could work from there.

Curt Campbell: When you say the setback are you talking about from the property line or the residence?

Mr. Butcher: I would think from the residence. For an existing residence, a taxpayer, at least that setback for them. I asked Lena Gray to come tonight and she can tell you that the way the proposed trail is that the survey line is set right on the property line. It is probably 15 - 20 feet from the side of her house, her front door and her back yard. We have a couple of other residents in Lagro that have their swimming pools in the back yard and the trail was actually paved and done within 5 feet of their pool. How would you like to have your daughter or son get out of the pool and go into the house, then go back out and not know who is out there? I know there is a street out in front and you expect that, but not in the back of the property. I think there are some things out there that you guys need to be aware of that really interferes with the people's properties and privacy. I don't know if you guys have been out there and seen what has been happening and all the different things. My wife and I have been going door to door for the last six months on this, we have talked to probably 90 % of the Lagro residents and not everybody wants the trail. We haven't found one person when we went door to door that wants the trail. Maybe if they had done it a little different, went to the people first and say can we do this or that, not just it is this way or no way. That is what everybody is upset about, people are coming home and finding survey markers in their yards. They tell them they own the land and we are finding out that the boat ramp for example, we talked to a state engineer yesterday and Mike will get the report from the engineer. The corner of the boat ramp is owned by the State of Indiana, it is not the town of Lagro. That used to be an old bridge there that still belongs to the state of IN then they built the new 524 bridge, the State retained the ownership of that property it was not deeded back over to the Town of Lagro. Now they are ruling if all that's got to be tore out or not. That is their call not my call. They went in and cut half of the guard rail with a saw, this is State property, state guardrail, cut the guardrail right in half and replaced it with wood fence. There is another liability for the county for letting it happen on State property. The State said they can't let that happen because the guardrail was designed if somebody speeds off if they go off in the ditch they will hit a nice structural guardrail that will keep them from going into the river. Now half of its gone, they pulled out the support beams cement and all. There is another issue on the trail too, the canal property. We are doing title search. We are trying to get every 3 to 4 properties and bring the titles up to date and get surveys done. We are finding out that a lot of these landowners are paying taxes on that ground. This was deeded back to them back in the 1940's and 1950's. There is a couple of them that are unsure, Leon Stout, Metz has been working on that for about two months, because it is so complicated, he hasn't ruled on his part because it is right downtown, Basin St. So that could very well come out that the whole Basin St., and the canal that every property owner may end up being that owner other than Duke Energy having that easement through it. A lot more issues are going to come up on this thing, we will let you guys know about it. Another thing they keep saying, economic development that it will bring growth

to the county. If you go to your census look at it I don't know if they have given you any economic report saying how much it is going to help these communities. If you look at your surrounding counties, Howard, Miami, Fulton, and Cass, they are down 3.8% since 2010 to date with their trails. Wabash Co. has no trail and we're only down 2.3 %. Does that tell you people moved away because of the trail? I don't know, you can look at it and decide what you want. I have not seen proof that there is any economic development, growth or anything because we have the trail, in rural areas. In your big cities, Indy, Ft. Wayne, college towns, trails are great, great transportation for the students, not in rural areas. In the Plain Dealer this week in Miami County they are asking the county for \$20,000 in housing development to repair a trail that washed out. This is what you guys are going to deal with year after year, more tax money, more tax money. They started out with a private entity, you get a little tax money into it then will they just leave it and let the county take it over. We are broke and don't want any more taxes.

Mr. Butcher: The other thing our guys are asking and I wanted Mike to clarify to them, when they originally got caught building without a permit on the boat ramp the DNR issued an after the fact permit and a fine and you guys suspended it and they wanted to know for the record on the second after the fact permit on the walk bridge and the trail the reasoning that you are not going to fine them or go back after them and ask them to pay the \$1,800?

Mr. Howard: I listed the boat ramp as the violation, the intent was to get them to understand they must have permits before proceeding to work in areas. We were aware of the other stone path that they had done. The intent was to get them to stop and understand that they needed to make sure that they have their permits in order before they did anything. I just listed it all as the boat ramp, I included that area east of the boat ramp toward Lagro Creek. No work was completed, that required a permit from the Floodplain Administrator, after the Stop Work Order was issued.

Mr. Butcher: You guys have all gone out on Hill St. going to Lagro in the heavy rains, you have seen how much erosion there is on the south side. There is massive erosion. What is going to happen if the trail that is going on that ground is even a half inch higher? That is going to further flood Hill St. wouldn't it? Water is going to seek a level and if you go with a trail, how are you going to drain the trail? Put culverts every fifty feet, that is almost 2 miles of massive drainage.

Mr. Givens: I can't imagine that it won't be a mess. It is not for me to decide, it would be the landowners rights. If the landowner wants it, that is his right. I think drainage would go back to Cheri Slee, she would know more about it than I. You can't restrict the natural flow of water so they would have to have an engineer lay out how much water that is holding back and make that appropriate drainage underneath the path for the water to get back to the river.

Cheri Slee: I would like to know more about that.

Mr. Butcher: It will be a nightmare.

Mrs. Slee: It will be a problem.

Patty Godfroy: Have they contacted you yet (Cheri Slee, Surveryor)?

Mrs. Slee: No they have not.

Mr. Butcher: When Wabash Co. accepted the membership with the RDA did they give you a copy of the bylaws and ethics before you voted it in? Mr. Givens: I believe that was before the County Council, not the Plan Commission Board.

Mr. Butcher: Before you can submit an application with the RDA you must have all permits everything done 100 % before they will even accept your application. WRT did not have 0 permits when they did this application and they are turning a blind eye to it. What is happening they are prolonging the payment for this because they have not done them. So they have answered their own thing and said they accept it, so they are going against their own bylaws and extend the money to them. They took 2% away from the other organizations here in the county that had their permits done correctly. There were 8-9 applicants for that money, all of them except WRT have all of their paperwork done, they approved their grant money but they took 2% away from them so WRT could receive the money, but they can't give them the money to them because they don't have their permits done.

Mr. Givens: My understanding is that there has to be 80% completion before funds will be released and the grant is for the last 20 - 25 % of the project for any of these projects.

Mr. Butcher: It is for hedging the last 20% of the project. You are correct on that. My biggest point I want to make is that they are penalizing other groups. We have filed for the After The Fact Permit on the walk bridge, the State got informed on that yesterday July, 6<sup>th</sup>. We will be going to Columbia City on July 26<sup>th</sup>. Our basis for filing on that is on the ownership of the ground, it is unclear, all of Basin St. and where the bridge is going and the canal, and INDOT ownership is not set in stone, yes they are but it is not what they think they are.

Mr. Givens: Is there anything else anyone would like to bring before the Commission at this time?

Chris Lochner: (Legacy Ridge / Unger Mountain) I understand the continuance moving forward to next month. There were a couple of requests for action from the Board from ourselves and an attorney, is that being rolled into one thing or is the action we requested by the commission going to be heard tonight? It is a separate correction from the application of the re-plat.

Mr. Thrush: We have told them it is presently unlawful and the Unger's should not be using it. If the Plan Commission wants to take further action it would be up to them.

Mr. Lochner: Do you agree with the invalid title transfer as well?

Mr. Thrush: The plat has not been approved.

Mr. Lochner: That would need to have the Commission approval to have you look at a reversal, correct?

Mr. Thrush: They would have to decide to direct me to.

Mr. Lochner: Have they seen our letter and Wendt's attorney's letter on that request?

Mr. Givens: I did receive your letter on Monday, June 26<sup>th</sup>.

Mr. Howard: All letters, correspondence and applications were sent to the Board members.

Mr. Lochner: Is the re-plat one side of it and the reversal of the void deed would be another, is that correct? I would contest that can a person who technically does not have a valid deed even apply for a re-plat?

Mr. Lochner: The cease and desist would also be a separate issue that was requested by the Wendt's attorney, but that is not my concern.

Mr. Thrush: Certainly the re-plat was improper.

Mr. Lochner: Right, now we are moving on to the fact.

Mr. Thrush: Whether or not the deed is invalid I don't know if we are going that far.

Mr. Lochner: You have to have that before the transfer would be valid, which is what they are doing and yet that was not done two years ago. Our request is for that to be turned back and have that process start, to have some kind of action because this could be drag out for a long time. If you go to the Beacon Schneider site it has their name on it, and what I am looking at in the Ordinance that was not a valid transfer of title because they did not get the re-plat before it. Our request is the same thing the Wendt's attorney is asking for, is it being snowballed and curtailed until next month or can we have a separate direction from them, we ask for what we want and they make their own request?

Mr. Thrush: I am sure the Plan Commission Board will consider all of the issues at the next meeting which will be a public hearing. This really isn't a public hearing, the issue has been continued to next month.

Mr. Lochner: I understand, will my request be heard at that time?

Mr. Thrush: Yes

Mr. Givens: I have read that privately there was an agreement with the three people who owned the housing restrictive covenants, has that progressed? I know you all have an attorney. Have there been any discussions?

Mr. Lochner: Has there been any proof of the agreement? 2 of the 3 parties have said there has been no agreement there was never an agreement, there was conversation, no agreement.

Mr. Thrush: I think he is asking, you have restrictive covenants, you have a remedy there, have you pursued that?

Mr. Givens: Have you pursued that?

Mr. Lochner: We would love to, but the problem is transfer of the title we would be going after the Farlow's the rightful owners of all of lot 2. We need to have the county remedy the void transfer before we can go after civil through our covenants.

Mr. Givens: So your covenants don't negate the sale?

Mr. Lochner: The County Ordinance does. A re-plat has to be or it has to be vacated first, and that never happened, the State law says that you have to have that or the transfer is void, it can be reversed via your permission to have Mr. Thrush go after that by court order. That is what we are requesting. We will gladly go after the covenants once the rightful owner of lot 2 is back to pre 2016 when this happened.

Mr. Thrush: I don't believe you are precluded from doing that now. I don't think you are precluded. Did Mr. Hess tell you that?

Mr. Lochner: Mr. Hess is not my attorney.

Mr. Thrush: I don't think you are precluded from bringing an action yourself.

**Mr. Lochner:** What is the County law? Is the county law broken? And is part of the County Plan Commission's responsibility to uphold the law?

**Mr. Thrush:** It hasn't been done correctly at this point.

**Mr. Lochner:** We would like the county to uphold the law, is it unreasonable to request that?

**Mr. Givens:** I think we will have to address this at our next meeting if the attorney's and yourselves have not worked out an agreement.

**Sam Unger:** I own the land to the south and the west of the area we are talking about. The land that you have came from my family's farm. There are a lot of things that we know have been done wrong, my dad had in a contract, an easement through the middle of Legacy Ridge. My son Sean Unger (co-owner of Unger Mountain LLC) tried to do everything right, he was not trying to break the law. It is something that happened. He did talk to Mr. Sposeep and he said it was OK. Maybe Mike (Mr. Sposeep) didn't understand everything he said I don't know. But Sean told me over a year ago that he did talk to Mr. Sposeep, then when Mr. Sposeep came back from Arizona and saw it with the leaves off it had up for a month or two.

**Mr. Lochner:** It is not about the wall, it is about the land and correct law.

**Mr. Unger:** The wall will still be, I will try to put it on me.

**Mr. Givens:** Mr. Thrush will have some better information for us and will be able to get it out to the Board members. We will do this under the continuance at the next meeting on Aug. 3<sup>rd</sup>.

**Mr. Givens:** Next on the agenda is discussion of the new Ordinance we have been working on.

**Mr. Howard:** The draft of the new Ordinance is on the county website for public review.

At this time, I would like to ask for Board approval to move forward with the Parcel Review Committee. I would like to see a member of the staff from each of the following offices represented on the committee: Surveyor, Parcel Drawer, Auditor's Office, Recorder's Office, Assessor's Office and the Plan Director. The committee would meet one time weekly to review any parcel splits or combinations. I would like Board approval to meet with these departments and go over what we would do and then talk with some local realtors.

**Mr. Thrush:** Whitley County is doing this now, are there any other counties?

**Mr. Howard:** There are some other counties, I know Huntington does. Whitley County did a presentation on this at a GIS meeting and they provided me with documentation of how they are doing this. The Whitley County Plan Director has also invited us to sit in on one of their weekly review meetings.

**Mr. Thrush:** There are some risks involved, however, the benefits will outweigh the risks.



**Board members agreed to proceed with development of the program for the county.**

**Mr. Howard: Any questions from the board on the Ordinance Draft**

**Mr. Rice: How long does it have to be out for public review?**

**Mr. Howard: The Ordinance Draft was initially put on the website for public review starting in early 2016. The most recent update was put on the web site on 5/31/17. I have had a response from Scott Dawes. He is pleased with the Right to Farm portion, but was discouraged with the CAFO setbacks not being adjusted per the IN Farm Bureau proposal presented at a previous meeting. Mr. Dawes is the only person to contact me since the ordinance draft was initially made public.**

**There being no further discussion Mr. Givens asked for a motion to adjourn the meeting. Joe Vogel made the motion to adjourn, this was seconded by Curt Campbell. Meeting adjourned at 9:00 pm**

*Libby Cook*

*Secretary, Wabash County Plan Commission Board*