

Wabash County Plan Commission

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Wabash County Plan Commission Board

Board Members: Randy Curless, Jeff Dawes, Sam Hann, Patty Lengel, Mark Milam, Doug Rice, Christian Rosen, Geoff Schortgen, Cheri Slee, Joe Vogel

Staff: Larry Thrush, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Meeting Minutes of Thursday, May 4, 2023

Roll call was taken with the following present:

Board Members: Randy Curless, Jeff Dawes, Patty Lengel, Doug Rice, Christian Rosen, Geoff Schortgen, Cheri Slee, Joe Vogel

Staff: Larry Thrush, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Absent: Sam Hann and Mark Milam

Others present: Cathy Cruz, Suzanne Peebles, Renee Long, Larry Long, Lorraine Campbell, Louella Krom, Jerome Malott, Pam Hawkins, Phyllis Hawkins, Michael Hawkins, Charlie Enyeart, Denise Enyeart, Cris Renn, David Cotton, Marcella Palmer, Cheryl Ross, Bonnie Keen, Mark Keen, Nicky Burnsworth, Conrad Morris (spoke but did not sign in)

The Wabash County Plan Commission Board met on Thursday, May 4, 2023 in the Commissioners Meeting Room at the Wabash County Courthouse. The meeting was called to order at 7:00 pm by Board Chairman Mr. Randy Curless.

Mr. Curless stated first on the agenda was a review of the minutes from the April 6, 2023 meeting and April 20, 2023 continuation of that meeting. It was noted the April 20 minutes need corrected to reflect that Randy Curless was absent. Mr. Vogel made a motion to approve the minutes with that correction, second by Mr. Rosen. Roll call vote was taken, motion passed with five voting in favor and two abstaining (Mr. Curless and Ms. Lengel).

Mr. Curless indicated next on the agenda is discussion regarding potential changes to the fence ordinance. Mr. Campbell presented the Board with copies of page 6-11 of the Zoning Ordinance. Per section 6.1.14 d.3. states that side and rear yard fences may not exceed 4' in height. Section 6.1.14 d.4. adds that no property line fence shall be solid partition. Section 6.1.14 d.1. states that any fence forward of the front of the house must be chain link and not exceed 4' in height. This applies to residential zones, not ag zones. Mr. Campbell stated that as residential zones such as Roann, Lagro, Laketon, and LaFontaine are more densely populated, those are the zones that people typically want solid partition privacy fence installed. Ms. Lengel inquired if privacy fence is currently allowed around pools and hot tubs. Mr. Campbell stated yes, in the immediate area of a pool or hot tub it can be up to 8 feet high. Mr. Rice asked what a standard privacy fence height would be. Mr. Campbell responded 6 feet. Mr. Rice made a motion to recommend to changing 4' to 6' for the rear and side heights and remove d.4 in that section so that a solid partition fence would be permitted. Ms. Slee seconded the motion. Roll call vote was taken, motion passed unanimously.

Mr. Campbell then presented page 5-33 of the zoning ordinance to the Board members. He noted that Mr. Howard, the previous Plan Director, had noticed an error in section 5.1, which is development standards for RL2 zone. The max lot coverage currently reads 40% impervious or 2,880 square feet. The max lot coverage should read 50% impervious or 3,600 square feet. Mr. Curless asked if there was any discussion from Board members or the public. There being none, he asked for a motion to recommend this change to the commissioners. Ms. Slee made the motion, second by Mr. Dawes. Roll call vote was taken, motion passed unanimously.

Next Mr. Campbell presented Chapter 4 to the Board members to review the requirements for an ILP. Section 4.2 includes a list of the requirements, then Chapter 25 Section 25.1.5 adds that while a violation is pending, no improvement location permits shall be issued by the Director for the property described in the order. Mr. Campbell asked if the Board felt that should be included in the list of requirements for an ILP. Mr. Rice stated he felt it was important and should be included. Mr. Thrush advised the Board that it could remain in Chapter 25 Section 25.1.5 and add that same wording to the list of requirements for an ILP in Chapter 4 making it 4.2.19. Mr. Curless asked if there was any further discussion from the Board or the public. There being none he asked for a motion to make a recommendation to the Commissioners to add it as Mr. Thrush suggested. Motion was made by Mr. Rice, second by Ms. Slee. Roll call vote was taken, motion passed unanimously.

Board members were then given copies of the Shipping Container Official Conditions, as passed April 1, 2021. Mr. Campbell stated these were passed as Official Conditions, but were not included in the Zoning Ordinance. He asked if the Board felt they should be included. Mr. Rice asked if they needed to be included in order to be official. Mr. Thrush stated he felt it could remain separate from the ordinance. Mr. Campbell indicated the office would work from those conditions for any shipping container questions.

Mr. Campbell shared with the Plan Commission that since January the Board of Zoning Appeals has had three variance hearings due to Chapter 6, Section 6.2.6.c which states in a platted R1, R2, R3, RL1, RL 2 District no accessory structure may be forward of the rear of the primary residential structure. Mr. Rice asked if those three so far would have been forward of the front of the residential structure, Mr. Campbell responded no. Mr. Dawes indicated he would like to allow the land owner a little more flexibility and would suggest it state no accessory structure forward of the front of the primary residential structure. Ms. Lengel asked for the definition of an accessory structure. Mr. Campbell provided the definition as stated in the zoning ordinance. He added that in Ag 1 and Ag 2 zones an accessory structure may be built prior to the residence. Mr. Curless asked if there was any other discussion from Board members or the public. There being none he asked for a motion. Ms. Slee made a motion to recommend a change to the commissioners for 6.2.6.c to read in R1, R2, R3, RL1, RL2 districts no accessory structure may be forward of the front of the primary residential structure. Second by Mr. Rice. Roll call vote was taken, motion passed unanimously.

Next on the agenda was discussion on the permit fee schedule. Mr. Campbell explained to the Board that the fee schedule lists a demolition permit and fee for such. However, in the new zoning ordinance there is no requirement for a demolition permit to be issued. Mr. Howard had previously issued demolition permits at no charge in the event of a house fire or similar situation. Mr. Campbell is recommending the Board remove the demolition permit from the permit fee schedule. Mr. Rice asked if a demolition permit would be required in a residential area due to how close everything is. Mr. Campbell responded that he has not seen that requirement. Mr. Thrush indicated he would support removing it because it would encourage people to remove unsafe structures. Mr. Curless asked if there was any further discussion from the Board or the public. There being none he asked for a motion to remove the demolition permit from the permit fee schedule. Motion made by Mr. Vogel, second by Mr. Rosen. Roll call vote was taken, motion passed unanimously.

Mr. Curless asked if Mr. Campbell had a complaint update for the Board. Mr. Campbell shared that 9 complaints were rolled over from last year, a total of 27 have been worked in 2023. Three have been resolved, and eight new

have come in that he needs to review. These complaints range from trash, burning, buildings without permits, junk / junk vehicles.

Mr. Curless then asked if there was any other business from Board members. There being none, he asked if there was any other business from those in attendance.

Ms. Cheryl Ross spoke first, asking the Board to consider what we are leaving our children and grandchildren. Ms. Ross thanked the Board for listening to the citizens' concerns and acknowledged Board members have a hard job to do. She stated she felt there was an ethics issue in accordance with Citizens Plan Guide, as there is in many counties, with the commercial solar farm projects. She added that solar is not a "farm" because solar does not grow. Ms. Ross went on to cite an article in the Peru newspaper and her knowledge of Terry Hauptert's solar experience where the systems are not well done and ineffective in Indiana. She stated she felt this is being done experimentally by Washington DC and our county is falling into it. Ms. Ross stated she felt that with 2 officials having ground in the area the solar companies' prey on those individuals. This issue has brought a lot of us together, we intend to hold you accountable, but we would like to see Mr. Curless resign from the Board due to loss of trust. Mr. Thrush responded that Mr. Curless had followed the law. Ms. Ross stated she has found in previous minutes where Mr. Curless had participated in solar discussion after his lease agreement was signed. Mr. Thrush asked if this was after signing the tentative lease. Ms. Ross stated yes, conversation was going on after that time. Mr. Thrush asked if Ms. Ross had documentation of this, she indicated she did not, but would get it.

Next to speak was Ms. Suzanne Peebles. Ms. Peebles asked Board members when they found out Mr. Curless had signed this lease. Board members stated they had not seen his lease agreement, and were not aware of the date it was signed. She feels Mr. Curless should have been more transparent. She stated it is in the minutes that Mr. Curless asked about a solar ordinance because he had heard they were coming to Wabash County. She continued that she feels Mr. Curless owed the Board and community more honesty and transparency. Mr. Thrush asked Ms. Peebles and Ms. Ross to bring documents to present these statements. Ms. Peebles stated the lease is public record in the recorder's office. Her property is right in the middle of the proposed project, and not a single land owner who signed an agreement mentioned it to her, she had to research it herself. Mr. Vogel informed Ms. Peebles that no application, maps, or leases have been presented to the Plan Commission. Ms. Peebles stated she did not realize the Board did not know, and that she had personally researched and created a map of the leased areas on Beacon Schneider. Mr. Vogel asked Ms. Peebles how many homes are in the area she has mapped. She indicated within her square mile there would be an estimated 10-12 homes. She has found 15 leases signed, and seven of those 15 are for Mr. Eppley and / or Mr. Curless. She asked Mr. Campbell if he had seen the leases. He responded that he had searched for some, but was not certain he had found all of them. Ms. Peebles shared with the Board that the documents can be found online or searched in the Recorder's Office by searching under Boulevard Associates LLC which is a subsidiary of NextEra. There are currently easements, agreements, leases, and amendments all recorded. As she understands it the agreements and leases are essentially the same thing. An amendment is made if they need to add more ground.

Mr. Cris Renn asked why the solar company was interested in A1 ground when our solar ordinance does not allow for solar development in A1. Mr. Thrush responded that he felt that would be a question for the solar company. Mr. Renn indicated that Mr. Curless would have known it was not allowed in A1. Mr. Thrush reminded Mr. Renn that Wabash County did not have A1 prior to the ordinance that became effective January 1, 2023. Mr. Dawes added that prior to the new ordinance Wabash County only had Ag zone, it was not separated into A1 and A2. Mr. Renn asked for verification that a solar development cannot be placed on A1 as of right now. Mr. Thrush stated they could still apply for a variance in the A1 zone. Mr. Renn asked if the Board would grant a variance for it. Mr. Thrush shared that would be a Board of Zoning Appeals decision. Mr. Renn indicated he plans to submit a petition for a moratorium on commercial solar to the Wabash County Commissioners at their next meeting. Mr. Renn cited Indiana Senate Bill 33 which calls for a solar panel and wind power equipment disposal study. The bill directs the Indiana Department of Environmental Management (IDEM) to conduct a study concerning the decommission and

disposal of solar panels and wind power equipment. It sets forth certain topics that IDEM must consider in conducting the study, provides that IDEM may consult with the Indiana Utility Regulatory Commission as necessary to conduct the study, and requires IDEM to file a report on its findings and recommendations resulting from the study with the chairman of the legislative council and present the report to the Interim Study Committee on Energy, Utilities, and Telecommunications; not later than October 1, 2024. Mr. Renn indicated they would like to see a moratorium put in place that would go through the October 1, 2024 study deadline. He presented a copy of the petition to the Plan Commission Board.

Mr. Charles Enyeart stated he felt everyone was entitled to have their voice heard, and asked Mr. Curless if he had any rebuttal to the solar project. Mr. Curless shared that NextEra had approached his father about ground he owned during his terminal cancer battle. As his father was getting his estate in order, he shared with him about the solar project. Mr. Curless indicated he immediately contacted Mr. Mike Howard, who was the Plan Director at the time. Under Mr. Howard's advice Mr. Curless has recused himself from any voting regarding solar. He stated there have been times when NextEra has had representatives attend meetings to present. In those situations, as Board Chairman, I introduced the presenters and asked questions as we were fact finding, but I made no comments and did not cast any votes on the solar ordinance. I respect what you believe, but please know that I have not discussed with anyone here.

Mr. Jerome Mallott shared that it seems suspicious when two prominent Board members own a large amount of property within the 2,000 acres proposed to be in the solar project, when there is 280,000 acres in the county. He reminded Board members they have seen the overwhelming public sentiment and know how citizens feel about this. Mr. Mallott asked how this can be stopped for good because he loves our county, and loves it for the right reasons.

Mr. Conrad Morris asked, currently a commercial solar project cannot be put on A1 ground without a variance, but it would be allowed in other districts. Mr. Thrush responded, yes currently a company could apply with a Special Exception in A2, FRC, and I zones.

Ms. Cathy Cruz stated her property is in city zoning, but surrounded by A2 ground. She would like the Board to consider moving the setbacks to ¼ mile. Mr. Campbell explained that the original setback chart was proportional to the acres involved, not all were ¼ mile setbacks. Ms. Cruz said she supports Mr. Renn's request for a moratorium because of the unknown issues in 30 years with decommissioning and disposal.

Mr. Dave Cotton inquired if conflict of interest papers had been signed by Mr. Curless or anyone else on any Boards. Mr. Thrush indicated he reviewed the situation with Mr. Curless and determined it was not appropriate. Mr. Cotton stated he felt it would be appropriate. Mr. Thrush stated according statute it was not appropriate for Mr. Curless. Mr. Cotton inquired what statute he would be referring to. Mr. Thrush did not have the Indiana Code available to him at the time to provide that information. Mr. Cotton felt Indiana Code Title 35 Section 44 would apply to this situation. Mr. Curless responded that he does not vote or have discussion on solar issues, and the form for Indiana did not apply per the conversation he had with Mr. Thrush. Mr. Dawes added that he believes Commissioner Barry Eppley did sign the conflict-of-interest form. Mr. Curless added there could be a difference in the fact that Commissioner Eppley is elected to his position on the Wabash County Board of Commissioners, whereas he is appointed to the Plan Commission Board.

Mr. Renn then asked how we would move forward with a moratorium. Mr. Thrush replied it needs to be a recommendation taken before the Commissioners as he does not believe the Plan Commission has the authority.

Ms. Cheryl Ross spoke, indicating she has heard of three companies now interested in Wabash County. Mr. Vogel asked if they were all interested in the same area. Ms. Ross stated no, she has heard of there being interest in property on the north side of the county as well as the Somerset area. She is afraid they will be getting too close

to our waterways. She shared that Texas is currently involved in a lawsuit with NextEra due to pollution in a river. She reminded the Board that the companies are going to the landowners before the Board. She is concerned that there is no proof it works, is not efficient, and that there are still too many unknowns. They will drop land values very quickly, and for some their land is their biggest investment. Ms. Ross also questioned the method of public notification, stating that very few receive the Wabash Plain Dealer to see the very small ads. Mr. Campbell and Mr. Thrush both shared that the Plan Commission follows the law regarding notification. Requests to change that would need taken to the legislature. Ms. Ross stated she has seen the zoom links for the Commissioners meetings recently and appreciates those being available. Mr. Dawes shared the Commissioners first started using Zoom during COVID shut down and have continued to offer it.

Ms. Denise Enyeart spoke in favor of the moratorium request because there are too many questions without answers. Mr. Charlie Enyeart asked if changing the setbacks and placing a moratorium would have to start with the Plan Commission Board. Mr. Enyeart stated he had conversation with Mr. Dawes, in which Mr. Dawes informed him it would start with Plan Commission. Mr. Thrush responded that the Commissioners can initiate either of those. Mr. Dawes added that a request for a moratorium could be made in writing to the Commissioners stating what you are asking for. They would then work through the process with their attorney, Mr. Steve Downs. As for the amendments to the setbacks, Mr. Dawes and Mr. Rice explained that could initiate with the Plan Commission Board or the Commissioners, but Commissioners would have the final decision.

Ms. Ross then stated that they have asked for a moratorium already. It was proposed by their attorney at the April 24, 2023 Commissioners meeting. Mr. Dawes requested they make a written request to the Commissioners – stating they had not seen one yet. Mr. Dawes indicated the Commissioners would then work through the process with their attorney, Mr. Steve Downs. Mr. Renn stated a written request for the moratorium is included in the petition they are presenting tonight and was also provided to the Commissioners at that April 24th meeting. He indicated he will bring the petition with moratorium request to the Commissioners meeting again on May 8, 2023. Ms. Ross stated Delaware County had placed a moratorium, and it seemed like a much simpler process for them. Mr. Campbell stated there was a moratorium in place in June 2021, with extension in September 2021, to allow time for the ordinance to be developed. The solar ordinance was put in place in October 2021, and amended in April 2022. Ms. Lengel read a portion of the petition that was presented that states they are asking for a moratorium to be instated again and for the setbacks to be reverted to the originals. Ms. Ross added she felt the moratorium was necessary to protect us and stop this for a while to allow time to research and make decisions. She encouraged everyone to tour some other counties that are dealing with solar companies currently. She asked if NextEra led the tour that Board members participated in at the Dunn's Bridge site. Mr. Vogel responded that it was led by NextEra. In the area they toured only one house was seen, along a state highway. Ms. Ross indicated she is aware of several homes in that area, as well as deep ditches that allow the runoff to flow to the river, which may include heavy metal pollution. The project is creating drainage problems for those who are still farming the area. She encouraged Mr. Curless to have a lawyer review the contract because some companies are expecting the farmer to pay the connection costs or putting liens on the properties. She stated farmers in other counties are not making near as much as they originally thought they would by signing these leases. She expressed concern for the road damages, indicating that the solar company is to restore them, but when – at the end of the project in 30 years? Ms. Ross, Mr. Renn, and Ms. Peebles reminded the Board that every county in Indiana is going through this, it is not just Wabash.

Ms. Suzanne Peebles stated many of those who have fought to keep commercial solar off A1 ground are now fearful of it taking over A2 ground. She indicated they will fight for them and the little towns, to keep solar from taking over. Ms. Peebles then asked each of the Board members present to share their thoughts.

Mr. Dawes stated to clear up any confusion that if the group is asking for a moratorium, that needs to be a written request to the Commissioners. If you are asking for an amendment of the setbacks, that would have to be a written request to the Plan Commission. Mr. Enyeart questioned that as it was not what Mr. Thrush had indicated

previously. Mr. Dawes indicated he had discussed it with Mr. Downs, as he expected to see the request for the moratorium at the previous Commissioners meeting. To his understanding, Mr. Dawes that would be the process. Ms. Ross asked if putting a one- or two-year moratorium in place protects us and allows us to take time to make the necessary changes. Mr. Dawes responded that his understanding is that a moratorium would cease anything from happening until it is lifted or expires. Mr. Renn restated he will submit that request to the Commissioners on Monday.

Mr. Rice stated he thought a moratorium was a good idea. In proposing a moratorium, he encouraged the group to include the information about the IDEM study that was shared this evening.

Mr. Schortgen introduced himself and his role on the Board, explaining that he is a non-voting member. He shared that he has information available from Purdue and other sources from other counties that he would be happy to share. He would also be interested in copies of the studies that have been cited this evening. Mr. Schortgen informed the crowd he has a contact at NextEra, he would be happy to share his contact information because a lot of the questions that are being asked of the Board are questions that could be answered by the company.

Mr. Vogel reminded the crowd that at the April 20, 2023 meeting at Honeywell Center, there was a 6-2 vote for a non-favorable recommendation. In that vote, it was two elected officials who voted to support the change and allow commercial solar on A1 ground. We are trying to support you.

Mr. Rosen shared that the Board is trying to protect everybody, but reminded the crowd that commercial solar is new to all of us. He commended Mr. Curless for stepping aside as needed. The 6-2 vote at the April 20, 2023 meeting shows we are trying to protect our county. Mr. Mike Howard, the prior Plan Director, was proactive in getting an ordinance in place. We thought we were ahead of it, we felt it was going to be difficult for a company to come, but at this point a moratorium would be a good idea. We are all still learning.

Ms. Slee stated she would be in favor a moratorium for commercial solar because she feels A2 ground is just as important to protect as A1 ground. We have learned a lot through this process, with a lot more to learn.

Ms. Lengel added that she voted no at the April 20, 2023 meeting, to support the crowd. She reminded the crowd that the Board members are working hard for the county, and should not be seen as the bad guys, this is our county too.

Ms. Peebles thanked the board members for sharing and for the vote they took on April 20th. She then asked if the board felt they were thinking correctly that a moratorium is the best next step.

Mr. Dawes asked what the crowd thinks should be done to make up for the coal plants that the federal government is decommissioning. Mr. Renn stated he recognizes that and would start with ceasing those decommissions and look at nuclear power plants that do not take as much ground. Mr. Dawes thanked Mr. Renn for sharing his thoughts to make that difference up.

Ms. Ross indicated she had spoken with Andy Zay's office. She asked if there would be a demand made to follow the state guidelines for commercial solar, and was told no. Ms. Ross has plans to meet further with Mr. Zay and Ms. Lorissa Sweet. She added that in October 2021 she felt our county was protected and had not been paying attention, but she will be paying attention now as well as watching at the state and federal level. Mr. Dawes reminded her that at this time no plans have been submitted. Ms. Ross shared that Mr. Downs works in Miami County as well, and her understanding is they are closer to having a solar project in place than we are. Mr. Dawes responded that he is not aware of where they are in the process in Miami County, but he does not believe it is finalized right now. Ms. Ross stated she felt Mr. Downs should be sharing what they are going through in Miami

County with Wabash County. Mr. Dawes stated at this time, he has not shared information with the Wabash County Commissioners.

Mr. Enyeart asked Mr. Campbell if he should give an amendment request to him or the Commissioners. Mr. Campbell responded that it could be given to either one. It would require a public hearing, a recommendation could be made to the Commissioners, and then they would make the decision to change or not. Ms. Peebles asked if it would be better to do a moratorium, amendment, or both. Mr. Dawes indicated he felt requesting both would be best. Mr. Rice stated he felt the first step would be requesting the moratorium, then we would have time during that period to work through amending the ordinance.

There being no further business Mr. Curless asked for a motion to adjourn the meeting. Mr. Vogel made the motion to adjourn, seconded by Ms. Lengel. Vote on the motion was taken, carried unanimously. Meeting adjourned at 8:55 pm.

*Amanda Lyons
Secretary, Wabash County Plan Commission Board*

**If any names are incorrect, spelled incorrectly, or omitted from the attendance in these minutes, we apologize.*

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