

October 13, 2009

A regular meeting of the Hendricks County Area Plan Commission was held on Tuesday, October 13, 2009 at 6:30 p.m. in Meeting Rooms 4 & 5 of the Hendricks County Government Center, 355 South Washington Street, Danville, Indiana 46122. Members present were: Mr. C. Richard Whicker, President; Mrs. Jo Ann Groves, Vice-President; Mrs. Sonnie Johnston; Mr. Brad Whicker; Mr. Eric Wathen; and Dr. Russell Hodgkin. Member absent was: Mr. Jon Cain. Staff members present were: Mr. Don F. Reitz, AICP, Secretary and Director of Planning; Mr. Tyler Starkey, Acting County Attorney; Mrs. Cathy Grindstaff, Director of Environmental Health; Mr. Eric Fazzini, Plan Technician; Mrs. Lesa Ternet, Planner; and Mrs. Joanne Garcia, Recording Secretary.

There was a quorum present with six (6) voting members. Mr. Whicker then opened the meeting with the Pledge of Allegiance.

Mr. Whicker stated that the first order of business was approval of the minutes for the September 8, 2009 meeting.

There being no corrections or additions, Mrs. Johnston made a motion to grant approval for the September 8, 2009 minutes.

Mrs. Groves seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

Mr. Whicker stated that the hearing on the text amendment, **TZA 05/09** would be moved to the end of the meeting and he called for the first public hearing item on the agenda:

**DPR 421/09 (PRIMARY): MV STORAGE;** a development plan review to develop a RV & boat storage business, 1.55 acres, Eel River Township, S4-T16N-R2W, located on the west side of State Road 236, approximately 0.15 mile southeast of County Road 650 North. (Kruse Consulting, Inc.)

**DPR 421/09 (SECONDARY): MV STORAGE;** a development plan review to develop a RV & boat storage business, 1.55 acres, Eel River Township, S4-T16N-R2W, located on the west side of State Road 236, approximately 0.15 mile southeast of County Road 650 North. (Kruse Consulting, Inc.)

Mr. Peter Arnold of Kruse Consulting, Inc. and Mr. Randy Spiegel, applicant, appeared. He reviewed the location and layout of the project. He stated that Mr. Spiegel wished to add a 45 x 98 foot self-storage unit for inside storage of RV's and boats. He stated that they had already received approval through the Board of Zoning Appeals for more than one principle use on the property. He then presented various views of the site. He stated the applicant was proposing a 98 x 45 foot storage building and a 128 x 24 foot storage building. He discussed the location of the dumpster to be enclosed with a fence. He then reviewed the conditions and recommendations in the staff's letter dated October 6, 2009 and how they had complied with those. He then referred to a letter dated October 1, 2009 with an attached revised letter dated October 13, 2009 requesting modifications to the zoning standards. Said letter was entered into record as Petitioner's Exhibit "A." He then discussed each of the five items in the October 13<sup>th</sup> letter as to the modifications. He stated that their first request was to allow the parking area to remain gravel for a period of three years. He stated at the end of that three year period, the area would be paved with a suitable hard surface material. He stated that in the meantime, the gravel parking area would be treated with a suitable material to suppress the dust. He then discussed the modifications requested for the buffer yard and landscaping along the north, south and west property lines as well as landscaping along the road frontage.

Mrs. Groves asked about the plantings around the existing building.

Mr. Fazzini explained.

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Mr. Reitz asked Mr. Arnold about paving of the entryways.

Mr. Arnold stated that Mr. Ayers requested them to extend the asphalt to be in line with the back of the grass strip on both drives.

Mr. Spiegel asked about using concrete.

Mr. Arnold replied that could be negotiable. He stated that part of the entry drive was in the State right-of-way and he would need to contact the Crawfordsville district office on what would be allowed. He stated he believed a hard surface would be required.

Mr. Whicker asked for further questions or comments.

Mr. Reitz stated that the circumstances for this project were unusual in that there was a commercially zoned property surrounded by farm fields.

Mrs. Johnston stated she felt the project would be an improvement.

Mr. Whicker then opened the public hearing. There being no one signed up to be heard, Mr. Whicker closed the public hearing.

Mrs. Groves then asked about paving the parking area within three years and she stated she also believed the project would be an improvement for the property.

Mr. Whicker asked about Mr. Spiegel's response to the request to pave to the back edge of the grass and was he agreeable.

Mr. Spiegel stated he was in agreement with that request.

There being no further discussion, Mr. Whicker called for a motion.

Mrs. Johnston then made a motion to grant primary approval for **DPR 421/09: MV Storage (Primary)** subject to the following conditions:

1. Staff conditions and recommendations in letter dated October 6, 2009;
2. Approval of petitioner's request for a modification to allow the parking area to remain unpaved for a period of three years as set out in petitioner's letter dated October 13, 2009;
3. Agreement by petitioner to pave the entrances to the property to the back or southwest side of the grass strip fronting State Road 236; and
4. All other commitments/modifications set out in petitioner's letter dated October 13, 2009.

Mrs. Groves seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

Mrs. Johnston then made a motion to grant secondary approval for **DPR 421/09: MV Storage (Secondary)** subject to the same conditions/recommendations as the primary approval.

Mrs. Groves seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

The staff recommendations and conditions were as follows:

**DRAINAGE CONDITIONS:**

1. Subject to Drainage Board approval and the conditions of the County Surveyor.

**STAFF RECOMMENDATIONS:**

1. The project engineer must provide an estimate of construction cost and post a performance guarantee prior to the issuance of an Improvement Location Permit.
2. The applicant has requested in their Modification request letter dated October 1, 2009 (enclosed) that they wish for the entrance drive and regular parking area to remain gravel for a period of three years. Acceptance of a delay in paving is a modification the Plan Commission has the authority to make. However, if the applicant does not ever intend on paving, Variance approval would be needed.
3. Due to the amount of existing gravel covering this relatively small site, 1.55 acres, the applicant has requested to eliminate the Type 3 bufferyard mounding requirement, as well as several other modifications to the Zoning Ordinance's landscaping requirements as stated in their Modification request letter dated October 1, 2009 (enclosed); they are as follows:
  - a. Northern bufferyard. The applicant would like to reduce the bufferyard width to 10 feet. There is significant existing vegetation along this property line and evergreen trees have been proposed where there are gaps in order to meet the Type 3 point requirements.
  - b. Western bufferyard. The applicant would like to reduce the bufferyard width to 20 feet. Two additional points of plantings need to be proposed in order to meet the Type 3 point requirements.
  - c. Southern bufferyard. The applicant would like to reduce the bufferyard width to 10 feet. There is significant existing vegetation along this property line and evergreen trees have been proposed where there are gaps towards the Type 3 point requirements. However, one additional point of plantings needs to be proposed in order to meet the Type 3 point requirements.
  - d. Eastern bufferyard (Frontage). The County Engineer must approve plantings in the Thoroughfare Plan Right-of-way. Staff recommends the five coniferous trees be replaced with deciduous ornamental trees for the Street Tree requirement and be placed as not interfere with the existing overhead power line.
4. Elevations, size and material specifications are needed for the existing culverts.

**CONDITIONS OF APPROVAL:**

1. A properly executed County/Owner Inspection Agreement must be provided prior to secondary approval with all appropriate fees paid prior to the start of any construction.
2. This project is subject to the National Pollutant Discharge Elimination System (NPDES) General Permit covering storm water quality. Procedures there under are governed locally by the Hendricks County Stormwater Management Ordinance and corresponding Technical Standards Manual. An application, fees, construction plans, specifications and Stormwater Pollution Prevention Plan must be presented for approval to the Hendricks County Drainage Board separately from the application to the Hendricks County Area Plan Commission. Secondary Stormwater Approval for a plat, PUD or development plan must be obtained from the Drainage Board prior to Secondary Approval (or Approval in the case of minor plats) by the Plan Commission or its Administrative and Plat Committee. In addition, an Erosion Control Permit issued by the Hendricks County Surveyor is required for individual building lots prior to obtaining a Building Permit from the Planning and Building Department.
3. The Hendricks County Planning and Building Department must be notified at least seventy-two (72) hours prior to any site improvements being installed.

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4. The applicant will have two (2) years from the date of approval to obtain an Improvement Location Permit/Building Permit. Should this two (2) year period elapse without the applicant having obtained the appropriate permit, the development plan approval will become null and void.
5. Development plan approval does not constitute approval of signage unless such approval is expressly granted by the Plan Commission as part of this development plan. Signage review and approval is typically carried out as a permitting process separate from development plan approval.
6. A State Plan Release is also required for multifamily, residential and non-residential (commercial and industrial) projects. In no way will a Development Plan Review be construed as a substitute or a waiver for these other required permits.

**MAP 524/09 (SECONDARY): HEARTLAND CROSSING BUSINESS PARK, SECTION 1 LOT 66C;** a 1-lot major subdivision, 6.801 acres, Guilford Township, S20-T14N-R2E, located west of State Road 236, approximately 0.15 mile southeast of County Road 650 North. (Maurer Surveying, Inc.)

**DPR 229/09 (SECONDARY): ABERDEEN APARTMENTS, PHASE 3;** a development plan review to construct a multi-family apartment complex, 6.801 acres, Guilford Township, S20-T14N-R2E, located west of Raceway Road, south of Aberdeen Apartments, Sec. 2, east of Heartland Crossing Business Park and north of The Colony at Heartland Crossing, Section 6. (Maurer Surveying, Inc.)

Mr. Paul Maurer of Maurer Engineering, Tim and Nathan ShROUT as managing members of Aberdeen Apartments, Phase III, LLC, and two members of the builder for the project, Adams & Marshall Homes, appeared.

Mr. Maurer submitted copies of two emails. The first copy was an email from Mr. Tim ShROUT to Mr. Eric Fazzini dated October 13, 2009 regarding items requested by Mr. Don Worley of the Indiana Department of Environmental Management (IDEM) and entered into record as Petitioner's Exhibit "A." The second copy was an email from Mr. Don Worley of IDEM to Mr. Maurer as to the receipt by Mr. Worley of the items requested and stating that his office would proceed with the processing and issuance of the construction permit. Said second email was entered into record as Petitioner's Exhibit "B."

Mr. Maurer stated that he had not been aware that the IDEM construction permit was required by the county at this stage of the approval process. He stated that since IDEM had received the submittal of the permit application only two weeks ago, their normal procedure would require thirty days. He stated that the email indicated that the requirements had been met and the permit would be issued. He stated that it was critical the project move forward as scheduled due to the time of the year.

Mr. Whicker asked if Mr. Fazzini was confident the permit would be received.

Mr. Fazzini stated he would defer that question to Mrs. Grindstaff of the Environmental Health Department.

Mrs. Grindstaff stated that her recommendation was usually to continue projects that had not received their sanitary sewer construction permits.

Mr. Maurer then stated that they would be willing to commit to not calling for a pre-construction meeting until the permit was in hand.

Mr. Whicker suggested that they move on with further discussion on the project and get back to the receipt of the permit.

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Mr. Maurer gave a review of the development plan for Aberdeen Apartments, Phase 3 as well as the landscape, utility and grading plans.

Mr. Whicker expressed his opinion that he believed the IDEM construction permit was forthcoming and to delay the project might cause a halt to the project for the year. He stated that the petitioner had already agreed not to enter into any preconstruction meetings prior to receipt of said permit. He stated he would be in favor of the project with those conditions.

The other members were in consensus with Mr. Whicker's decision.

Mr. Whicker asked the staff if the petitioner's landscaping plan met the requirements of the ordinance.

Mr. Fazzini explained what requirements of the plan still needed to be met.

Mr. Maurer stated he had no problem with any of those requirements.

Mrs. Groves asked about the plantings around the buildings being shown on the plat.

Mr. Fazzini explained the recommendations set out regarding plantings to be added to the site plan.

Mrs. Ternet stated that the 1992 ordinance did not require the same amount of landscaping as in the current ordinance.

Mr. Maurer stated that they had increased the number of plantings from the original plans approved for the other phases of the apartment project.

There being no further discussion, Mr. Whicker called for a motion.

Mrs. Groves made a motion to grant secondary approval for **MAP 524/09: Heartland Crossing Business Park, Section 1, Lot 66C (Secondary)** subject to the following conditions:

1. Conditions and recommendations in staff letter dated October 6, 2009; and
2. Receipt of Indiana Department of Environmental Management (IDEM) permit for sanitary sewer construction prior to scheduling of pre construction meeting for project.

Mr. Brad Whicker seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

The staff conditions and recommendations were as follows:

**DRAINAGE CONDITIONS:**

1. Subject to Drainage Board approval and the conditions of the County Surveyor.

**STAFF RECOMMENDATIONS:**

1. A redaction statement needs to be added to the plat prior to recording.
2. All improvements are to be coordinated subject to Development Plan Approval.

**CONDITIONS OF APPROVAL:**

1. A properly executed County/Owner Inspection Agreement must be provided prior to secondary approval with all appropriate fees paid prior to the start of any construction.

2. This project is subject to the National Pollutant Discharge Elimination System (NPDES) General Permit covering storm water quality. Procedures there under are governed locally by the Hendricks County Stormwater Management Ordinance and corresponding Technical Standards Manual. An application, fees, construction plans, specifications and Stormwater Pollution Prevention Plan must be presented for approval to the Hendricks County Drainage Board separately from the application to the Hendricks County Area Plan Commission. Secondary Stormwater Approval for a plat, PUD or development plan must be obtained from the Drainage Board prior to Secondary Approval (or Approval in the case of minor plats) by the Plan Commission or its Administrative and Plat Committee. In addition, an Erosion Control Permit issued by the Hendricks County Surveyor is required for individual building lots prior to obtaining a Building Permit from the Planning and Building Department.
3. The Hendricks County Planning and Building Department must be notified at least seventy-two (72) hours prior to any site improvements being installed.
4. Addresses must be added to the final plat prior to recording. The Director of the Plan Commission will not sign the final plat without addresses included. To obtain addresses, the applicant must submit a request to the Planning and Building Department well in advance of the recording package being forwarded to the Hendricks County Engineer's Office. The Plat Address Information Sheet submitted with the plat application does not constitute a request for addresses.
5. Development plan approval does not constitute approval of signage unless such approval is expressly granted by the Plan Commission as part of this development plan. Signage review and approval is typically carried out as a permitting process separate from development plan approval.
6. A State Plan Release is also required for multifamily, residential and non-residential (commercial and industrial) projects. In no way will a Development Plan Review be construed as a substitute or a waiver for these other required permits.

Mrs. Groves then made a motion to grant secondary approval for **DPR 229/09: Aberdeen Apartments, Phase 3 (Secondary)** subject to the following conditions:

1. Conditions and recommendations in staff letter dated October 6, 2009; and
2. Receipt of Indiana Department of Environmental Management (IDEM) permit for sanitary sewer construction prior to scheduling of pre construction meeting for project.

Mr. Brad whicker seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

The staff conditions and recommendations were as follows:

**DRAINAGE CONDITIONS:**

1. Subject to Drainage Board approval and the conditions of the County Surveyor.

**STAFF RECOMMENDATIONS:**

1. The project engineer must provide an estimate of construction cost and post a performance guarantee prior to the issuance of an Improvement Location Permit.
2. In order to more closely match the landscaping that was approved for phase one along Walnut Grove Drive, five additional plantings need to be added consisting of the following species: two Austrian pines, two Norway spruces and one aristocrat pear. Also, all plantings should be grouped in amounts of three or four with spacing at a maximum of 17 feet on center.

3. For building/foundation landscaping, one deciduous ornamental tree and two deciduous shade trees need to be proposed on each side of all two-unit buildings to more closely match the landscaping that was approved for phase two. An additional ornamental or deciduous tree should be added to each side of all three and four-unit buildings.
  - a. A building planting detail sheet needs to be provided with shrub labels and a schedule.
4. Geo-textile material needs to be proposed under the temporary entrance.

**CONDITIONS OF APPROVAL:**

1. A properly executed County/Owner Inspection Agreement must be provided prior to secondary approval with all appropriate fees paid prior to the start of any construction.
2. This project is subject to the National Pollutant Discharge Elimination System (NPDES) General Permit covering storm water quality. Procedures there under are governed locally by the Hendricks County Stormwater Management Ordinance and corresponding Technical Standards Manual. An application, fees, construction plans, specifications and Stormwater Pollution Prevention Plan must be presented for approval to the Hendricks County Drainage Board separately from the application to the Hendricks County Area Plan Commission. Secondary Stormwater Approval for a plat, PUD or development plan must be obtained from the Drainage Board prior to Secondary Approval (or Approval in the case of minor plats) by the Plan Commission or its Administrative and Plat Committee. In addition, an Erosion Control Permit issued by the Hendricks County Surveyor is required for individual building lots prior to obtaining a Building Permit from the Planning and Building Department.
3. The Hendricks County Planning and Building Department must be notified at least seventy-two (72) hours prior to any site improvements being installed.
4. The applicant will have two (2) years from the date of approval to obtain an Improvement Location Permit/Building Permit. Should this two (2) year period elapse without the applicant having obtained the appropriate permit, the development plan approval will become null and void.
5. Development plan approval does not constitute approval of signage unless such approval is expressly granted by the Plan Commission as part of this development plan. Signage review and approval is typically carried out as a permitting process separate from development plan approval.
6. No Improvement Location Permit/Building Permit shall be issued until any plat associated with Secondary Development Plan Review has been recorded.
7. A State Plan Release is also required for multifamily, residential and non-residential (commercial and industrial) projects. In no way will a Development Plan Review be construed as a substitute or a waiver for these other required permits.

**TZA 05/09: AMENDMENT TO THE HENDRICKS COUNTY ZONING ORDINANCE;** by amending Chapter 4 Zoning Districts, Chapter 14 Overlay Districts and Chapter 15 Definitions.

Mr. Reitz stated that when this matter was heard last month, there were some concerns about the draft wind farm overlay district and in particular Section H.1.b. He stated that as it was written, that section could be read to essentially say that when a wind turbine was located near a non-participating property, it could, in theory, constrain the landowner's ability to locate any structures on that property. He stated that was not the intent of the ordinance. He stated that the ordinance now presented added the reiteration of the definition of an occupied building which would be one that existed when the wind turbine was applied for. He stated that in any situation where a structure was to be built subsequent to the location of a turbine, that portion of the ordinance would not affect said construction. He stated that for the sake of clarity, some text was added to Section H.1.b. that said if a non-participating landowner was putting up a structure, the underlying zoning district's setbacks would pertain in this case and would have nothing to do with the five times the hub height setback that applied to wind turbines.

Mr. Whicker stated he believed the clarification was helpful.

Mr. Wathen stated he was okay with the changes made.

There being no further questions, Mr. Whicker opened the public hearing. There being no one present to be heard, Mr. Whicker closed the public hearing and called for a motion.

Mrs. Groves made a motion to send a favorable recommendation to the Hendricks County Board of Commissioners for **TZA 05/09**.

Mrs. Johnston seconded the motion.

FOR – 6 –                      AGAINST – 0 –                      ABSTAINED – 0 –

This matter would be heard by the Hendricks County Board of Commissioners on Tuesday, October 27, 2009 at 9:30 a.m. or thereafter.

The amendment to the text was as follows:

Amendment to Chapter 4 Zoning District as follows:

**4.1 (C) Overlay Districts Established**

Add:

- e. Wind Energy Facility Overlay District

Amendment to Chapter 14 Overlay Districts as follows:

Add:

**14.5 WIND ENERGY FACILITY OVERLAY DISTRICT (WEF-OL)**

**A. PURPOSE.** The purpose of this section is to provide for an overlay district that will permit and regulate the development of Wind Energy Facilities in Hendricks County, subject to reasonable conditions that will minimize impact on the underlying district and potential for conflict with other uses.

**B. OVERLAY APPLICABILITY**

This Section applies to all Wind Energy Facilities proposed to be constructed after the                      effective date of this Ordinance, except that this Section is not intended to apply to Wind Energy Conversion Systems, Noncommercial for the primary purpose of onsite use.

**C. ESTABLISHMENT OF WIND ENERGY FACILITY OVERLAY DISTRICT.** A Wind Energy Facility Overlay District shall be established as regulated in Section 12.5 Zoning Map and Text Amendments. The Wind Energy Facility Overlay District boundaries shall be indicated on the official Zoning Map of Hendricks County, Indiana and shall exist as a layer of zoning regulation in addition to that of the established (underlying) zoning district.

**D. PERMITTED USES, SPECIAL EXCEPTIONS, RELATION TO UNDERLYING ZONING DISTRICT, AND RELATION TO OTHER OVERLAY DISTRICTS**

1. Permitted Uses, Special Exceptions

- a. Wind Energy Facility Overlay permitted use. Wind energy facilities are a permitted use in the WEF-OL district.
- b. Permitted uses in the underlying zoning district. In addition to wind energy facilities, permitted uses in the WEF-OL district shall include those uses permitted in the underlying zoning district.
- c. Special exceptions authorized in the underlying zoning district. Special exception uses permitted in the underlying zoning district are authorized as special exception uses in the WEF-OL district.

2. Relation To Underlying Zoning

- a. For wind energy facilities. For wind energy facilities, provisions of this Section shall supersede the regulations of the underlying zoning district for all specific regulations that are included within this section. If no specific and differing regulations are included, the regulations of the underlying zoning district shall apply.

- b. For all other uses. Regulations of the underlying zoning district shall apply except in those cases where they are superseded by regulations of this Section, in which case regulations of this Section shall apply.

3. Relation To Other Overlay Districts

In the case that this overlay district overlaps other overlay districts, the regulations of the WEF-OL district shall supersede the regulations of all other overlay districts. Where no special regulations are included within the WEF-OL district, the regulations of the other overlay district shall apply.

**E. DEVELOPMENT PLAN APPROVAL**

1. No Wind Energy Facility, or addition of a Wind Turbine to an existing Wind Energy Facility, shall be constructed or located within Hendricks County unless a development plan approving construction of the facility under Section 12.3 Development Plan Review and Approval has been obtained.
2. Any physical modification to an existing and permitted Wind Energy Facility that materially alters the size, type and number of Wind Turbines or other equipment shall require a development plan approval under Section 12.3 Development Plan Review and Approval. Like-kind replacements shall not require approval.
3. In addition to the requirements of Section 12.3 Development Plan Review and Approval, the Development Plan Review of a Wind Energy Facility shall include the following information:
  - a. An affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary approval and permits for construction and operation of the Wind Energy Facility;
  - b. Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located;
  - c. A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
  - d. Documents related to decommissioning;
  - e. Other relevant studies, reports, certifications and approvals as may be reasonably requested by Hendricks County to ensure compliance with this Section;
  - f. Throughout the approval process, the Applicant shall promptly notify Hendricks County of any changes to the information contained in the development plan application; and
  - g. Changes to the pending application that do not materially alter the initial development plan may be accepted without a new public hearing.

**F. PERMIT REQUIRED**

No Wind Energy Facility shall be constructed and operated unless an Improvement Location Permit and a Certificate of Occupancy and/or Certificate of Completion have been issued under Sections 12.10 Improvement Location Permit and 12.11 Certificate of Occupancy and Certificate of Completion.

**G. DESIGN AND INSTALLATION**

1. Design Safety Certification

The design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

2. Uniform Construction Code

To the extent applicable, the Wind Energy Facility shall comply with relevant and applicable local, state and national codes, and relevant and applicable international standards.

3. Controls and Brakes

All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

4. Blade Clearance

The Wind Energy Facility blade must be a minimum of thirty feet above ground level.

5. Electrical Components

All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.

6. Visual Appearance, Power Lines

- a. Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.
- b. Wind Energy Facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
- c. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator.
- d. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

7. Warnings

- a. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- b. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.

8. Climb Prevention/Locks

- a. Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.
- b. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

**H. SETBACKS**

1. Occupied Buildings. For purposes of this Section, "Occupied Building" shall mean a residence or any building used for institutional purposes or as a public gathering place that is occupied or in use when the wind turbine permit application is submitted.
  - a. Wind Turbines shall be set back from the nearest Occupied Building located on a Participating Landowner's property a distance not less than the normal setback requirements for the underlying zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building
  - b. Wind Turbines shall be set back from the nearest Occupied Building located on a Non-participating Landowner's property a distance of not less than five (5) times the Wind Turbine hub height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building. This setback shall not apply to the setbacks for a new structure on a Non-participating Landowner's property. Standards of the underlying zoning district shall apply regardless of the location of any existing wind turbine on Participating property.

2. Property lines: All Wind Turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for the underlying zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.
3. Public Roads: All Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right of-way line of the nearest public road to the center of the Wind Turbine base.

#### **I. WAIVER OF SETBACKS**

1. Property owners may waive the setback requirements in H(1)(b) (Occupied Buildings on Non-participating Landowner's property) and H(2) (Property Lines), if those setback requirements are greater than those of the underlying zoning classification, to a distance no less than the setback requirements of the underlying zoning classification by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.
2. The written waiver shall notify the property owner(s) of the setback required by this Ordinance, describe how the proposed Wind Energy Facility is not in compliance, and state that consent is granted for the Wind Energy Facility to not be setback as required by this Ordinance.
3. Any such waiver shall be recorded in the Recorder of Deeds Office for the County where the property is located. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of setback shall run with the land and may forever burden the subject property.
4. Upon application, the Plan Commission may waive the setback requirement for public roads for good cause.

#### **J. USE OF PUBLIC ROADS**

1. The Applicant shall identify all state and local public roads to be used within the County to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.
2. The County Engineer or a qualified third party engineer hired by the County and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
3. The County may bond the road in compliance with state regulations.
4. Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense.
5. The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

#### **K. LOCAL EMERGENCY SERVICES**

1. The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s).
2. Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

#### **L. NOISE AND SHADOW FLICKER**

1. Audible sound from a Wind Energy Facility shall not exceed fifty-five (55) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*.
2. The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.

**M. WAIVER OF NOISE AND SHADOW FLICKER PROVISIONS**

1. Property owners may waive the noise and shadow flicker provisions of this Ordinance by signing a waiver of their rights.
2. The written waiver shall notify the property owner(s) of the sound or flicker limits in this Ordinance, describe the impact on the property owner(s), and state that the consent is granted for the Wind Energy Facility to not comply with the sound or flicker limit in this Ordinance.
3. Any such waiver shall be recorded in the Recorder of Deeds Office of the County where the property is located. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property.

**N. SIGNAL INTERFERENCE**

The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

**O. LIABILITY INSURANCE**

There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. Certificates shall be made available to the County upon request.

**P. DECOMMISSIONING**

1. The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or individual Wind Turbines, within (12) twelve months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.
2. Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
4. An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommissioning Costs"). Said estimates shall be submitted to the County after the first year of operation and every fifth year thereafter.
5. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided that at no point shall Decommissioning Funds be less than twenty five percent (25%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the County.
6. Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the County.
7. If the Facility Owner or Operator fails to complete decommissioning within the period prescribed by Paragraph N (1) then the landowner shall have six (6) months to complete decommissioning.
8. If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed by Paragraphs N(1) and N(7), then the County may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the

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County shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the County may take such action as necessary to implement the decommissioning plan.

9. The escrow agent shall release the Decommissioning Funds when the Facility Owner or Operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

#### **Q. PUBLIC INQUIRIES AND COMPLAINTS**

1. The Facility Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
2. The Facility Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints.

#### **R. REMEDIES**

Compliance with the provisions of this Section shall be enforced under Section 13.1 Enforcement.

Amendment to Chapter 15 Definitions as follows:

Add:

**Wind Energy Facility:** A facility whose purpose is the generation of electricity from wind for resale or off-site use, consisting of one or more wind energy conversion systems (WECS) and other accessory structures including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant components.

1. Facility Owner: The entity or entities having an equity interest in the Wind Energy Facility, including their respective successors and assigns.
2. Hub Height: The distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.
3. Non-Participating Landowner: Any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.
4. Occupied Building: A residence or any building used for institutional purposes or as a public gathering place that is occupied or in use when a wind turbine permit application is submitted.
5. Operator: The entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.
6. Turbine Height: The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.
7. Wind Turbine: A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

Mr. Whicker stated that ended the hearing portion of the agenda. He called for any staff discussion prior to adjournment.

#### **DPR 418/09: AACME AUTO PARTS & TOWING**

Mr. Fazzini gave a presentation on the development plan for Aacme Auto Parts & Towing. He stated that in October of 2008, the Plan Commission and Board of County Commissioners had approved a rezoning from Highway Business to a Major Industrial District for auto salvaging for the property north of U.S. Highway 40 and west of County Road 300 West, to be known as Aacme Auto Parts & Towing. He

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stated that as part of that approval, the applicant agreed to nineteen commitments, two of which pertained to landscaping. He stated one of the commitments was to install a three to five foot high undulating earthen mound along U.S. Highway 40 with evergreen trees on top of the mound every fifteen feet. He stated the applicant had also committed to planting two bushes between the trees. He stated there were four mounds to be installed. He stated that mound one had not been constructed, mound two had been constructed but was short two evergreen trees and two bushes. He stated that mound three had been constructed with proper plantings and mound four had not been constructed fully and was short six evergreen trees and eight bushes. He stated that all of the mounds would require final grading and erosion control. He stated that next to mound two, there was some debris and gravel present near the roadway. He stated that in May of 2008 the site received development plan approval which was subject to the following conditions: widening of the entrance drive to twenty-eight feet and installation of a culvert pipe per the plans by August 1, 2009 with hard surfacing completion on designated areas by December 31, 2009. He stated that the drive had not yet been widened, nor a culvert pipe installed and no hard surfacing installed. He stated that the developer, Donald White and his attorney, Amy Broderick, were present to discuss the reasons for non compliance with the commitments.

Mrs. Amy Broderick of the Comer Law Office appeared on behalf of Mr. White and Aacme Auto Parts & Towing. She stated that they had been having continuous discussions with the planning staff since the development plan had been approved in May of 2009. She stated that they acknowledged they were out of compliance with the landscaping requirements. She stated that due to the fact that Mr. White did not take title to the property until after the development plan had been approved, they only had two or three weeks to install the required landscaping. She stated that much of the expansion of the driveway had been completed. She stated that they had received their Indiana Department of Transportation (INDOT) Entrance Permit and the culvert and widening of the drive into U.S. Highway 40 would be completed soon. She stated that Mr. White had spent much of the summer months attempting to satisfy the requirements of the Indiana Department of Environmental Management (IDEM). She stated that a large portion of the front of the property had been cleaned up. She stated that one of the old buildings had been removed as well as the chain link fence along U.S. Highway 40. She stated that Mr. White had one more deadline to meet for IDEM and that was removal of all old tires prior to December 31, 2009. She then discussed Mound #1 which was to be located east of the entrance drive and if necessary, Mr. White would complete that installation after direction from the staff. She stated that Mound #2 was short two trees and those would be installed. She stated that there had been no business activity on the property. She stated that improvements had been made and would continue.

Mr. Whicker then asked for a perspective on the matter from the staff.

Mrs. Grindstaff commented that an inspection had been made and they found no evidence of any burying of trash.

Mr. Reitz stated that the reason staff had asked Mr. White to appear at this meeting was because of a very complicated set of commitments and a timeline attached. Even though they believed the work would be completed, it was not being completed according to the timeline approved at the development plan review. He suggested that the Commission authorize the staff to work with Mr. White to develop a new timeline that would make sense and could be enforced.

Mrs. Broderick stated that she and her client would discuss a new timeline and establish one that would be compliant and make sense.

Mr. Whicker asked Mr. Fazzini if he felt enough had been done at the site.

Mr. Fazzini stated that the department's engineering inspector had visited the site and found that there had been a lot of clearing and some mounding that complied with the landscaping requirements but that more work needed to be completed.

Mr. Brad Whicker stated he would be in agreement with authorizing staff to work with the petitioner on establishing new timelines to complete the work.

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Mr. Wathen stated he understood the neighbor's concerns. He stated he felt the site was improving and wanted to see those improvements continued.

Mr. Whicker stated he would be in agreement with authorizing staff to make sure Mr. White complied with the requirements in a timely manner.

Dr. Hodgkin stated he agreed and wished for staff to set a firm but fair timeline for completion.

Mrs. Groves stated a firm timeline needed to be agreed to.

Mr. Whicker stated there was a consensus to authorize staff to work with Mr. White on a new timeline to complete the requirements.

Mr. Whicker called for the next discussion item.

Mr. Reitz then discussed the Quality of Life Survey in order to increase community involvement in planning issues for the county. He stated that part of the county's vision statement was to protect the quality of life in conjunction with growth and development. He stated that Hendricks County was the second fastest growing county in the state and was the 85<sup>th</sup> fastest growing county in the nation. He discussed establishing a set of indicators on what was important for quality of life through community consensus building. He stated that the staff had talked informally with community organizations, foundations, Economic Development Partnership, United Way and the Convention and Visitors Bureau. He stated that it would require a sustained commitment in surveying or establishing criteria of what the community thought was important. He stated the behavior of the criteria was compared over time. He stated a set of progress standards would be obtained from the surveying on how the community was doing and it would also provide a good planning tool.

Mr. Wathen asked other than staff time, what would be the cost of this project.

Mr. Reitz stated it would be costly and the reason the staff was approaching this slowly was to get an agreement on the part of organizations which would offer staff time and funding and to conduct a phone conference with the Jacksonville Community Indicators Consortium. He stated that community had been conducting quality of life surveys since 1985. He stated if some commitment was made in time and effort, then a reality check was necessary to be sure that the county could begin a costly project.

Dr. Hodgkin stated this was a generation of gathering data and working from good data. He stated he felt the concept was good and he felt the county was ready for this as it was beginning to be a very diverse county.

Mr. Reitz stated that what he thought would require a good deal of time and effort was the consensus building to establish what variables were studied. He stated a survey needed to be credible.

Mr. Whicker stated that he would like to see some general outline or format that could be adopted. He stated he liked the idea that the staff had solicited input from other organizations within the county.

Mr. Reitz stated that he could provide the members with several different surveys as examples from other communities. He stated he believed the surveys should solicit perceptions, feelings and opinions rather than just demographics.

Mr. Whicker then asked for a consensus from the members on whether Mr. Reitz should move forward.

There was a consensus from the members to proceed.

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There being no further discussion, Mr. Whicker adjourned the meeting at 8:00 p.m.

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Don F. Reitz, AICP, Secretary