

September 8, 2009

A regular meeting of the Hendricks County Area Plan Commission was held on Tuesday, September 8, 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. Jon Cain; Mr. Eric Wathen; and Dr. Russell Hodgkin. Staff members present were: Mr. Don F. Reitz, AICP, Secretary and Director of Planning; Mr. John Ayers, County Engineer; Mr. Greg Steuerwald, County Attorney; Mr. David Gaston, County Surveyor; Mr. Eric Fazzini, Plan Technician; and Mrs. Joanne Garcia, Recording Secretary.

Mr. Whicker stated that there was a quorum present with seven (7) 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 August 14, 2009 meeting.

There being no corrections or additions, Mr. Brad Whicker made a motion to grant approval for the August 14, 2009 minutes.

Mrs. Groves seconded the motion.

FOR – 7 –                      AGAINST – 0 –                      ABSTAINED – 0 –

Mr. Whicker called for the first public hearing item on the agenda:

**ZA 398/09: KS HENDRICKS PARTNERS, LLC;** a zoning amendment change from GB/General Business District to PB/Planned Business District, 23.4 acres, Liberty Township, S25,26-T14N-R1W, located on the west side of State Road 39, approximately 0.23 mile north of the intersection of State Road 39 and County Road 1000 South. (Ben Comer/Comer Law Office)

Mr. Ben Comer of the Comer Law Office appeared on behalf of the applicant. He reviewed the location of the project at the 70 West Commerce Park at Exit 59. He stated that most of the development was zoned PB/Planned Business District with a couple areas zoned GB/General Business District. He stated that their application requested a twenty-three (23) acre tract to be rezoned to PB in order to present the next item on the agenda which was a development plan review for the site. He stated that the rezoned area would be replaced by a GB zoned area somewhere else within the development by the end of the year. He stated that would maintain the balance between the PB and GB zoned areas in the development. He stated that at the suggestion of the planning staff, they had submitted a development commitment recording form. He then presented a preview of the proposed site. He stated that the staff had recommended approval and he welcomed any questions or comments.

Mr. Whicker called for questions or comments.

Mrs. Groves asked Mr. Comer to again point out where the area in question was located within the 70 West Commerce Park.

Mr. Jerry Williams of KS Hendricks Partners, LLC appeared and pointed out the area in question.

Mr. Whicker asked the reason for the change in zoning.

Mr. Williams explained that the end user planning on locating in the project needed the area for their development plan site.

Mr. Whicker asked if the area to be replaced with the GB zoning had been decided on.

Mr. Williams pointed out the tentative area to be replaced.

September 8, 2009

Mr. Whicker asked Mr. Reitz if that would be a plausible site from a planning standpoint.

Mr. Reitz responded that it would be consistent with the plan for the site.

There was a discussion on the area to be designated as an alternative General Business zoned site.

There being no further questions or comments, Mr. Whicker opened the public hearing. There being no one signed up to be heard, Mr. Whicker closed the public hearing. Mr. Whicker then asked for any further discussion. There being none, Mr. Whicker called for a motion.

Mr. Cain then made a motion to send a favorable recommendation to the Hendricks County Board of Commissioners for **ZA 398/09: KS Hendricks Partners, LLC**, as well as adopting the positive Findings of Fact/Law.

Mr. Brad Whicker seconded the motion.

Mrs. Groves then commented that in the staff recommendation letter dated September 1, 2009, a commitment was set out to rezone another 23.4 acres to make up for the loss of PB/Planned Business District. She stated that was in error and should be changed to reflect GB/General Business District.

Mr. Reitz stated that would be corrected and that the submitted Development Commitment Recording Form did contain the correct wording.

FOR – 7 –                      AGAINST – 0 –                      ABSTAINED – 0 –

This matter would be heard by the Board of Hendricks County Commissioners on Tuesday, September 15, 2009 at 9:30 a.m. or thereafter.

The positive Findings of Fact/Law were as follows:

Staff Comments:

The applicant is proposing to rezone additional property to PB/Planned Business District. The applicant has stated that the reason for this request is to accommodate locating the first industrial user to this development. In order to accommodate the proposed industrial user, approximately 23.4 acres of the GB/General Business property must be converted to the PB/Planned Business District. The applicant is committing to make up for the loss of the GB/ General Business District property by rezoning 23.4 acres elsewhere in this development to GB/General Business District. This proposal can be considered as a relatively inconsequential internal change of zoning districts to the overall Kite project.

Compatibility with current uses. The area is a mix of rural residential and agricultural uses including a few commercial uses. The property that surrounds the 23.4 acres is currently zoned GB. This proposal does not alter the compatibility of any previous Kite rezonings.

Compatibility with future uses. Exit 59 has received a lot of attention because of the location's economic development potential. The recently adopted Comprehensive Plan pays special attention to the area by designating it as Planned Business on the Land Use Plan which includes a mix of office, light industrial and flex-tenant type businesses located in campus type settings. This proposal is consistent with the Comprehensive Plan and does not affect the compatibility of any previous Kite rezonings.

Other considerations. The previous rezoning included a commitment to meeting certain development standards shown in the document *Gateway Logistics Center*

*Development Standards.* The same commitments will apply to this proposal. Additionally, a commitment made previously provided for land for public safety purposes (a Sheriff's substation or fire house).

Staff Recommendation: Based on the information provided at the time of application, staff recommends the Plan Commission recommend: **APPROVAL** in the event the petitioner commits to:

1. The *Gateway Logistics Center Development Standards*;
2. To provide one acre of the overall development for public safety purposes; and
3. Rezone 23.4 acres to make up for the loss of GB/General Business District as a result of this petition.

**Hendricks County Area Plan Commission**

Findings of Fact/Law

ZA 398/09: KS Hendricks Partners, LLC

An application for the above noted zoning map amendment was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to rezone a property from GB/General Business to PB/Planned Business. Acting in its role as staff to the Hendricks County Area Plan Commission, the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in the department's office at the Hendricks County Government Center.

In accordance with Indiana Code (IC) 5-3-1, the DPB staff published a legal notice in the *Hendricks County Flyer* and the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with the Hendricks County Area Plan Commission Rules of Procedure Section 3.07(D)(1). The public hearing included the above zoning map amendment on its agenda.

In accordance with Section 3.07(D)(2) of the Rules of Procedure of the Hendricks County Area Plan Commission, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this rezoning petition.

The Commission conducted the hearing as advertised and heard evidence and testimony on the above noted rezoning. Meeting in open session, the Commission subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and the Hendricks County Zoning Ordinance. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Commission weighed the evidence associated with the following requirements and made the following findings.

**IC 36-7-4-603: Zoning ordinance; preparation and consideration of proposals. In preparing and considering proposals under the 600 series, the plan commission and the legislative body shall pay reasonable regard to:**

**(1) The comprehensive plan;**

The Commission finds that the proposal does substantially comply with the recommendations of the Hendricks County Comprehensive Plan. The Comprehensive Plan designates this area as Planned Business. In anticipating a large-scale, integrated multiple-use facility, the proposed zoning is entirely consistent with this designation.

**(2) Current conditions and the character of current structures and uses in each district;**

The Commission finds that the proposal is consistent and compatible with the character of current structures and uses in the zoning district. The establishment of a distribution and warehousing center is an appropriate land use at this developing interchange area. Further, zoning standards applied to the development will ensure its compatibility with surrounding uses.

**(3) The most desirable use for which the land in each district is adapted;**

The Commission finds that the proposal does represent the most desirable use for which the land is adapted. The site under consideration is located within a specially designated interchange area. The proposed land uses anticipated by this rezoning are compatible with the Comprehensive Plan's expectations about how the interchange should develop.

**(4) The conservation of property values throughout the jurisdiction;**

The Commission finds that the proposal does conserve property values in the jurisdiction. The proposed zoning is an appropriate and desirable classification for this interchange area. Further, the proposed use is consistent with the long-established land use recommendation for the area.

**(5) Responsible development and growth.**

The Commission finds that the proposal does represent responsible development and growth. Warehouse and distribution center uses and mixed uses are consistent with the county's economic development policy for this area, and consistent with the Comprehensive Plan.

**DPR 420/09 (PRIMARY): PROJECT CENTERLINE;** a development plan review to construct a warehouse/distribution building, 100.6 acres, Liberty Township, S25,26-T14N-R1W, located on the west side of State Road 39, approximately 0.23 mile north of County Road 1000 South. (Paul Kite Company)

Mr. Jerry Williams of KS Hendricks Partners, LLC and The Paul Kite Company appeared along with Mr. Greg Ernst of Clayco, the developer of the project.

Mr. Williams then reviewed the plans for the proposed project. He presented the site plan and elevations and stated that the building would be LEED certified. He also discussed the landscaping plans for the site.

Mr. Whicker asked why the site had been moved from the previously approved plan.

Mr. Williams stated that there were financial concerns regarding the previously approved site as to construction of the road and that it would be in the best interests of the parties involved to move the site closer to the main road.

Mr. Whicker then asked for confirmation on staff recommendations #5 & #6 in the staff's letter dated September 1, 2009 and whether they would be in compliance.

Mr. Fazzini explained how the applicant needed to comply with the bufferyard requirements.

Mr. Greg Ernst of Clayco appeared and stated they would be willing to make that change.

Mr. Wathen expressed his concern regarding the staff's recommendation that no construction begin until the Engineer Certification for Waterline Construction was received.

Mr. Reitz stated that recommendation should be removed as the timing of the project would not allow them to comply with that requirement.

Mr. Whicker asked about recommendation #8 regarding the exterior light fixtures.

Mr. Fazzini responded that the cut sheets provided needed to be more specific.

Mr. Whicker asked for further questions or comments. There being none, Mr. Whicker opened the public hearing.

Mr. Ray Davis of 1837 East County Road 900 South appeared. He stated that although he had no objections to the project, he would be interested in knowing the end user for the site.

Mr. Whicker stated that they were not aware of the end user.

There being no one else wishing to be heard, Mr. Whicker closed the public hearing and asked for further questions or comments. There being none, Mr. Whicker called for a motion on the primary and secondary approvals for the project.

Mr. Wathen made a motion to grant primary approval for **DPR 420/09: Project Centerline (Primary)** subject to the following recommendations and conditions:

1. Recommendations and conditions in staff's letter dated September 1, 2009; and
2. Deleting staff recommendation #2 regarding the Engineer Certification for Waterline Construction being received prior to start of construction.

Mr. Brad Whicker seconded the motion.

FOR – 7 –                      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. Staff recommends no construction begin until the Engineer Certification for Waterline Construction is received.
3. The following easement agreements must be submitted for approval by the County Attorney:
  - a. Open Space Easement agreement with off-site tree maintenance agreement included
  - b. Sidewalk easement and maintenance agreement
  - c. Off-site grading easement agreement (only necessary if land not acquired)
4. The construction limits and silt fence shown on C3.0 and all subsets is within 25 foot setback for Limited Land Disturbance, shown on C4.3, adjacent to streamside forests (riparian areas). The limits and silt fence needs to be adjusted at any point where the top of bank is within 25 feet.- HCZO 7.16 (B)(2)(b)
5. For part of the required Type 3 bufferyard along the western property line the applicant has proposed to use a mix of on-site and off-site existing vegetation. The following existing trees must be inventoried and shown on the landscaping plan to satisfy the point shortage of the proposed plantings: three deciduous trees at 6" caliper and five evergreen trees at 8" caliper.
6. The Type 1 bufferyard required for a portion along the western property line is not at least 50% deciduous plantings for the western 300 feet.
7. The semi-truck maneuvering court at the northwest corner of the loading area must be a minimum of 130 feet in diameter in order to comply with the Gateway Logistics Standards.

8. All exterior light fixture lenses must be the flat glass option rather than tempered glass or drop lens.
9. The current approved INDOT Entrance Permit shows three Public Road Approaches which do not correspond to the Development Plan under consideration. It is the intent of the Developer to modify this permit to match the DPR at the time of confirmed sale of the property. The Amended Entrance Permit must be completed and approved prior to construction.

**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. The parcel acreage must be deeded off before an Improvement Location Permit/Building Permit will be issued.
8. 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 722/09 (REVISION): 70 WEST COMMERCE PARK, PHASE I (ROAD ONLY) (SECONDARY);** a revision to a previously approved secondary major plat, 1.2 acres, Liberty Township, S25,26-T14N-R1W, located west of State Road 39, east of County Road 100 East, north of County Road 1000 South and south of County Road 900 South. (Beam, Longest & Neff)

Mr. Jerry Williams of KS Hendricks Partners, LLC/Paul Kite Company appeared. He stated that they were requesting a revision to the secondary approval for the project road which ran through the property and down to County Road 1000 South. He stated that at the present time, they wished to only construct a portion of that road in the front of the property which was approximately 650 feet of roadway and utilities, providing service to the development plan also being considered for approval at this meeting.

Mr. Whicker asked for questions or comments from the Commission or staff. There being none, Mr. Whicker called for a motion.

September 8, 2009

Mr. Wathen made a motion to grant approval for the revision of **MAP 722/09 (Revision): 70 West commerce Park (Road Only) (Secondary)** subject to all staff recommendations and conditions in staff's letter dated September 1, 2009.

Mr. Brad Whicker seconded the motion.

FOR – 7 –                      AGAINST – 0 –                      ABSTAINED – 0 –

The staff recommendations and conditions were as follows:

**DRAINAGE CONDITIONS:**

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

**STAFF RECOMMENDATIONS:**

1. The temporary access easement for the cul-de-sac must be recorded as a separate legal document approved by the County Attorney.
2. Staff recommends no construction begin until an agreement for funding of improvements on State Road 39 is received.

**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, a Clean Water Permit issued by the Hendricks County Surveyor/ Clean Water Department 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.

**DPR 420/09 (SECONDARY): PROJECT CENTERLINE;** a development plan review to construct a warehouse/distribution building, 100.6 acres, Liberty Township, S25,26-T14N-R1W, located on the west side of State Road 39, approximately 0.23 mile north of County Road 1000 South. (Paul Kite Company)

Mr. Jerry Williams of KS Hendricks Partners, LLC/Paul Kite Company appeared. He stated they were requesting secondary approval with the same conditions and recommendations as the previously approved primary application and he had no further information to add.

Mr. Whicker asked for questions or comments from the Commission or staff. There being none, Mr. Whicker called for a motion.

Mr. Brad Whicker made a motion to grant secondary approval for **DPR 420/09 (Secondary): Project Centerline** subject to the following:

1. Recommendations and conditions in staff's letter dated September 1, 2009; and
2. Deleting staff recommendation #2 regarding the Engineer Certification for Waterline Construction being received prior to start of construction.

Mr. Cain seconded the motion.

FOR – 7 –                      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. Staff recommends no construction begin until the Engineer Certification for Waterline Construction is received.
3. The following easement agreements must be submitted for approval by the County Attorney:
  - a. Open Space Easement agreement with off-site tree maintenance agreement included
  - b. Sidewalk easement and maintenance agreement
  - c. Off-site grading easement agreement (only necessary if land not acquired)
4. The construction limits and silt fence shown on C3.0 and all subsets is within 25 foot setback for Limited Land Disturbance, shown on C4.3, adjacent to streamside forests (riparian areas). The limits and silt fence needs to be adjusted at any point where the top of bank is within 25 feet.- HCZO 7.16 (B)(2)(b)
5. For part of the required Type 3 bufferyard along the western property line the applicant has proposed to use a mix of on-site and off-site existing vegetation. The following existing trees must be inventoried and shown on the landscaping plan to satisfy the point shortage of the proposed plantings: three deciduous trees at 6" caliper and five evergreen trees at 8" caliper.
6. The Type 1 bufferyard required for a portion along the western property line is not at least 50% deciduous plantings for the western 300 feet.
7. The semi-truck maneuvering court at the northwest corner of the loading area must be a minimum of 130 feet in diameter in order to comply with the Gateway Logistics Standards.
8. All exterior light fixture lenses must be the flat glass option rather than tempered glass or drop lens.
9. The current approved INDOT Entrance Permit shows three Public Road Approaches which do not correspond to the Development Plan under consideration. It is the intent of the Developer to modify this permit to match the DPR at the time of confirmed sale of the property. The Amended Entrance Permit must be completed and approved prior to construction.

**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. The parcel acreage must be deeded off before an Improvement Location Permit/Building Permit will be issued.
8. 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.

Mr. Whicker then asked Mr. Reitz to present the text amendments on the agenda.

**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 presented the foregoing text amendment regarding the Wind Energy Facility Overlay District. He stated it was a pre-emptive attempt in anticipation of the reasonable likelihood that a wind farm of some type would be looked at in Hendricks County in the future. He then gave a presentation on the changes the proposed amendment would bring to the 2008 Hendricks County Zoning Ordinance as follows:

- Wind Energy Facility Overlay District
- Similar to Town Center Overlay District
  - Permits Wind Farms and Underlying Permitted Uses
  - Wind Farm Standards or Underlying Standards May Apply
  - Development Plan Review and Building Permits Required
  - Design Standards
  - Liability Insurance
  - Decommissioning Requirements
  - Establish Overlay District
  - Permitted Uses
  - Development Standards
  - Development Plan Approval
  - Permits Required
  - Design Requirements
  - Setbacks, Waiver of Setbacks
  - Use of Public Roads
  - Noise, Shadow Flicker, Waiver
  - Liability Insurance
  - Inquiries, Complaints

Mr. Whicker asked a question regarding the underlying zoning and whether it would be allowed to continue and expand.

September 8, 2009

Mr. Reitz stated that was correct.

Mr. Whicker then asked a hypothetical question regarding if someone wished to build a home and if a wind farm existed, the tower or turbine could not be located any closer than 1,000 feet to said residence and the owner would be required to comply with that requirement unless they signed a waiver to not be in compliance.

Mr. Reitz stated that would be correct. He stated the setback between buildings and turbines would need to be met unless a waiver was signed allowing a structure to be closer to the wind turbines.

Mr. Wathen stated that in order to construct a wind farm overlay, there would need to be a 1,000 foot separation from the property line.

Mr. Reitz stated that a structure would need to comply with the separation requirements but the 1,000 foot figure was just a hypothetical figure. He pointed out Section H of the proposed amendment regarding setbacks for occupied buildings, property lines and/or public roads.

There was a discussion on Section H among the members and Mr. Reitz.

Mr. Wathen stated it was a concern of his that unless there was buy-in from the surrounding properties, that distance requirement or five times the turbine hub height should not need to be met since an applicant wishing to construct a wind farm should not limit the property owners around him from building a structure.

There was further discussion on the matter among the members and Mr. Reitz. There was then a consensus among the members to continue the matter for another thirty (30) days in order to further revise the proposed amendment to the 2008 Zoning Ordinance.

Mr. Brad Whicker made a motion to continue **TZA 05/09: Amendment to the Hendricks County Zoning Ordinance** for thirty (30) days to the October meeting.

Mrs. Groves seconded the motion.

FOR – 7 –                      AGAINST – 0 –                      ABSTAINED – 0 –

**TZA 06/09: AMENDMENT TO THE HENDRICKS COUNTY ZONING ORDINANCE** by amending Table 4.3 Permitted and Special Exception Land Uses, Chapter 7 Development Standards, Chapter 12 Petitions, Permits and Procedures and Chapter 15 Definitions.

Mr. Reitz then presented the proposed amendment regarding regulation of private non-commercial types of wind energy facilities. He stated that the proposal was to define non-commercial wind energy conversion systems or those for private use only and rooftop systems. He stated that the bulk of the amendment was largely to change the permitted use/special exception table in Chapter 4 of the zoning ordinance to specify non-commercial wind energy conversion systems as special exceptions in all zoning districts. He stated that in addition they were proposing to make non-commercial systems as exceptions to the maximum height up to 120 feet. He stated that in addition, they would be adding decision criteria to the special exception section.

Mr. Whicker asked if it applied to turbines under 100 kw.

Mr. Reitz stated that was correct.

Mr. Whicker then stated that there was a question in regard to these non-commercial turbines and whether they should be allowed without an engineering review at the least on a support tower.

Mr. Reitz stated he recalled that question.

September 8, 2009

There was further discussion on Mr. Whicker's question. There was a consensus not to require the engineering review for non-commercial turbines.

Mr. Whicker then opened the public hearing. There being no one signed up 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 06/09**.

Mrs. Johnston seconded the motion.

FOR – 7 –                      AGAINST – 0 –                      ABSTAINED – 0 –

This matter would be heard by the Hendricks County Board of Commissioners on Tuesday, September 15, 2009 at 9:30 a.m. or thereafter.

The Ordinance amendment as approved was as follows:

AMENDMENT OF TABLE 4.3 PERMITTED AND SPECIAL EXCEPTION LAND USES AS FOLLOWS:

Delete: "wind energy conversion systems."

Add: "wind energy conversion systems, noncommercial" as special exception in all zoning districts.

AMENDMENT OF CHAPTER 7 DEVELOPMENT STANDARDS AS FOLLOWS:

**7.7(A)(2) Exceptions**

e. Wind Energy Conversion Systems. Wind energy conversion systems are exempt up to 120 feet in height. For propeller turbines, the height shall be measured from the rotor blade at its highest point to the top surface of the wind energy conversion system foundation. For vertical axis turbines, the height shall be measured from the highest point of the unit to the top surface of the wind energy conversion system foundation.

e.f. Necessary Appurtenances. The following structural elements may exceed the permitted height standards for the zoning district in which they are located by up to ten (10) feet.

- 1) Necessary mechanical appurtenances;
- 2) Water tanks;
- 3) Chimneys;
- 4) Fire towers;
- 5) Stair towers; and
- 6) Elevator bulkheads
- 7) Wind energy conversion systems, rooftop

f.g. AD District. No exceptions to the height requirements are permitted in the AD district.

**7.12(B) Permitted Accessory Uses and Structures**

16. Energy conversion Equipment. Solar energy ~~and/or wind energy~~ conversion systems.

AMENDMENT OF CHAPTER 12 PETITIONS, PERMITS, AND PROCEDURES AS FOLLOWS:

**12.7(D) Decision Criteria**

Add:

4. In addition to complying with all other applicable requirements of Section 12.7(D), all special exceptions for noncommercial wind energy conversion systems shall comply with the following standards:

September 8, 2009

1. The approval shall apply to a single wind energy conversion system only unless the BZA authorizes otherwise.
2. The building permit application shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
3. The wind energy conversion system tower and blades shall be painted white or gray or another non-reflective unobtrusive color.
4. The applicant shall comply with all applicable FAA requirements.
5. Noise produced by the wind energy conversion system under normal operating conditions shall comply with Zoning Ordinance Section 7.16(B)(5)(a)(3) Noise Standards.
6. If connected to a utility system, the wind energy conversion system shall meet the requirements for connection and operate as set forth in the electric utility's current service regulations applicable to wind energy conversion systems.
7. The wind energy conversion system shall be no nearer than 1.1 times the height of the wind energy conversion system to any property line, public right-of-way, railroad right-of-way, or overhead electrical transmission or distribution lines. For propeller turbines, the height shall be measured from the rotor blade at its highest point to the top surface of the wind energy conversion system foundation. For vertical axis turbines, the height shall be measured from the highest point of the unit to the top surface of the wind energy conversion system foundation. The distance shall be measured from the center of the foundation at the base of the tower.
8. Any other structures associated with the wind energy conversion system shall maintain the same minimum setbacks as listed in number 7.
9. The wind energy conversion system shall not be installed until evidence has been given that the utility company has been informed of the applicant's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
10. If the wind energy conversion system is inoperable for six consecutive months the owner shall be notified that they must, within six months of receiving notice, restore the system to operating condition. If the owner(s) fail to restore the system to operating condition within the six-month time frame, the owner shall be required to dismantle the wind energy conversion system for safety reasons.
11. All signs, other than the manufacturer's identification or appropriate warning signs, shall be prohibited. Manufacturer's identification signs or appropriate warning signs shall not be located no more than five (5) feet above the base of the turbine.
12. Illumination of the wind energy conversion system shall be prohibited unless required by the FAA.
13. Climbing foot pegs or rungs below 12 feet on a freestanding tower shall be removed to prevent unauthorized climbing.

AMENDMENT OF CHAPTER 15 DEFINITIONS AS FOLLOWS:

~~Wind Energy Conversion System (WECS): A wind-driven machine that converts wind energy into electrical power for the primary purpose of resale or off-site use.~~

Wind Energy Conversion System, Noncommercial: : A wind-driven machine with a rated generating capacity of less than 100 kilowatts that converts wind energy into electrical power for the primary purpose of on-site use ~~and not for resale.~~

Wind Energy Conversion System, Rooftop: A wind-driven machine mounted to the roof of a building that converts wind energy into electrical power for the primary purpose of on-site use

There being no further discussion, Mr. Whicker adjourned the meeting at 7:34 p.m.

---

Don F. Reitz, AICP, Secretary