

**MINUTES**  
**WHITLEY COUNTY PLAN COMMISSION**  
**REGULAR MEETING**

**January 20, 2021**

**7:00 p.m.**

**Whitley County Government Center**  
**Lower Level, Meeting Room A/B**

| <b>MEMBERS</b>   | <b>PRESENT</b> | <b>ABSENT</b> | <b>STAFF</b>                 |
|------------------|----------------|---------------|------------------------------|
| Michael Bemis    | Electronic     |               | Nathan Bilger                |
| Dane Drew        | X              |               | Mark Cullnane                |
| Brent Emerick    | X              |               |                              |
| Theresa Green    | X              |               | <b>LEGAL COUNSEL</b>         |
| Thor Hodges      | X              |               | Elizabeth Deckard            |
| Kim Kurtz-Seslar | Electronic     |               |                              |
| Joe Wolf         | X              |               | <b>NONVOTING ADVISOR</b>     |
| Brad Wolfe       | X              |               | John Woodmansee (Electronic) |
| Doug Wright      | X              |               |                              |

**AUDIENCE MEMBERS**

The audience list of in-person and electronic guests is attached below.

**CALL TO ORDER/ROLL CALL**

Mr. Wright called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance. Mr. Bilger read the roll call with members present and absent listed above. Mr. Bilger recognized and welcomed new members Ms. Green, Mr. Bemis, and Mr. Drew.

**ELECTION OF OFFICERS**

Mr. Wright explained that since one of the officers from 2020 was no longer on the Commission, the election of officers should be by position.

Mr. Wolf nominated Mr. Wright as president; Mr. Emerick seconded. Ms. Green nominated Mr. Hodges as president; Mr. Wolfe seconded. Having no further nominations, and after Ms. Deckard explained the voting process, a roll call vote was taken on each nomination. On the nomination of Mr. Wright, the vote was 4-5, with Green, Hodges, Kurtz-Seslar, Wolfe, and Wright voting against. On the nomination for Mr. Hodges, the vote was 6-3, with Emerick, Drew, and Wolf voting against. Mr. Hodges was declared president, and he took over running the meeting.

Mr. Hodges called for nominations for vice president. Mr. Wolfe nominated Ms. Kurtz-Seslar. Mr. Hodges clarified that a second is not necessary for nomination motions. Having no further nominations, he called for a vote. The result of the roll call vote was 9-0.

Mr. Hodges asked Mr. Bilger to explain the duties of the secretary position; Mr. Bilger did so. He then called for nominations for secretary. Mr. Emerick nominated Mr. Wolf. Having no further nominations, Mr. Hodges called for a vote. The result of the roll call vote was 9-0.

Mr. Bilger explained that the BZA representative appointment was limited to the citizen members of the Commission. Mr. Hodges called for nominations for the BZA representative. Mr. Wolfe nominated Mr. Wright. Having no further nominations, Mr. Hodges called for a vote. The result of the roll call vote was 9-0.

Mr. Bilger gave a description of the Joint Advisory Board and the responsibilities of a board member. Mr. Hodges asked if there were any limitations on members. Mr. Bilger stated that there was nothing in the ordinance, but since the County Council and Commissioners were already represented on the Advisory Board, choosing from the other members might be appropriate. Mr. Hodges then called for nominations. Mr. Wolfe nominated Mr. Emerick. Having no further nominations, Mr. Hodges called for a vote. The result of the roll call vote was 9-0.

The officers and appointments for 2021: Thor Hodges, President; Kim Kurtz-Seslar, Vice president; Joe Wolf, Secretary; Doug Wright, BZA member; and Brent Emerick, Joint Advisory Board member.

### **CONSIDERATION OF PREVIOUS MEETING MINUTES**

The minutes for the December 2020 meeting were presented for consideration. Mr. Wolf made a motion to accept the minutes as presented; Mr. Emerick seconded. Motion passed by roll call vote, 8-0-1, with Green abstaining.

### **ADMINISTRATION OF OATH**

Ms. Deckard administered the oath to audience members wishing to speak.

### **OLD BUSINESS**

There was no old business.

### **NEW BUSINESS**

Mr. Bilger explained the policy for order of items on the agenda and requested that 21-W-SUBD-1 be moved to the second item on the agenda in order to hear the associated rezoning case first. Mr. Hodges agreed that order change made sense.

#### **21-W-REZ-1, Zone map amendment, AG to RR, 8.25 acres in Washington Twp.**

Marquell-Devries Properties, LLC requested an amendment to the Whitley County Zoning Map by reclassifying 8.248± acres from AG, Agricultural District, to RR, Rural Residential District. The subject property, approximately 10020 S. 800 East, was located on the west side of S. 800 East, approximately 2/3 mile north of US 24, in Section 36 of Jefferson Township.

Mr. Bilger presented the staff report. He stated that the associated plat request would create the second and third platted lots from the 2018 parent tract, which would classify the subdivision as a Major Residential Subdivision. The AG district did not permit Major Residential Subdivisions, so rezoning to another district, in this case RR, would be necessary. He presented aerial views of the property, maps of the surrounding zoning districts and subdivisions, and summarized the rezoning review criteria. He stated that the proposal seemed to fit most of the criteria, as it would bring the zoning closer to the actual use of the property. He concluded by mentioning that the public safety may be a concern at a zoning level since 800 East was a higher-traffic road, and the

property had limited road frontage for access points. If this was a subdivision with a public street or more lots, this could be important, but since only two lots were proposed, the impact would be less concerning.

Mr. Bilger asked the Commission if it had questions for him. Mr. Wolf asked if access to the lots would be via driveways or a publicly maintained street. Mr. Bilger stated that access would be through separate driveways for each lot. Ms. Kurtz-Seslar asked what the speed limit is along S. 800 East in the vicinity of the subject property. Mr. Bilger and Mr. Wolf stated that the speed limit is 45 mph.

Hearing no further questions from the Commission for Mr. Bilger, Mr. Hodges asked the petitioner or its representative to address the Commission.

Joe Heerendeen, 14033 Illinois Road, Fort Wayne, IN 46814, stated that he is a land surveyor with Sauer Land Surveying and is petitioner's representative. He stated that the rezoning request was made to accommodate the County's requirement that three or more lots in the AG district platted from the parent tract as it existed in 2018 require rezoning of the newly created lot(s). He said that the lots would have wells and would connect to Aqua Indiana's sanitary sewer.

Mr. Wolf asked Mr. Heerendeen if it was correct that petitioner's intent is to create two, separate driveways to access the proposed lots. Mr. Heerendeen confirmed that this was correct.

Mr. Hodges opened the public hearing. No comments were heard.

No on-line comments were heard. Mr. Hodges closed the public hearing and called for a motion. Mr. Wright made a motion to forward a favorable recommendation of 21-W-REZ-1; Mr. Wolfe seconded. Motion passed by roll call vote, 9-0.

### **21-W-SUBD-1, Primary approval, "Marquell Acres"**

Marquell-Devries Properties, LLC requested preliminary plat approval of a 2-lot subdivision proposed to be known as Marquell Acres. The property, approximately 10020 S. 800 East, was located on the west side of S. 800 East, approximately 2/3 mile north of US 24, in Section 36 of Jefferson Township. The property was pending rezoning to RR, as discussed in the previous item, and contained approximately 8.248 acres.

Mr. Bilger presented the staff report. The proposed plat would be two lots of about 4 acres each. He stated that sanitary sewer was available along 800 East, but water would be wells. He summarized utility and agency comments, noting that Frontier had a line along the north property line that would need to be in an easement. Additionally, easements along the perimeters of the lots would be needed since the plat had multiple lots in a developed area. He concluded with the following recommended conditions of approval:

1. The existing AG zoning must be amended to a district that permits Major Residential Subdivisions.
2. Add 10' drainage and utility easements to perimeters of lots. Additional width may be necessary where there are existing utilities.
3. The signature block needs to include a witness line to meet recording requirements. Names will need to be updated.
4. Secondary plat approval delegated to the Plan Commission Staff.

Mr. Bilger asked the Commission if it had questions for him. Hearing none, Mr. Hodges asked the petitioner or its representative to address the Commission.

Joe Heerendeen, 14033 Illinois Road, Fort Wayne, IN 46814, stated that he is a land surveyor with Sauer Land Surveying and is petitioner's representative. He said that this petition is related to the previously discussed rezoning request and that petitioner wants to create two buildable lots for residential development.

Hearing no questions of the petitioner from the Commission, Mr. Hodges opened the public hearing. No comments were heard.

No on-line comments were heard. Mr. Hodges closed the public hearing and called for a motion. Ms. Kurtz-Seslar made a motion to approve 21-W-SUBD-1, with the staff conditions; Mr. Wright seconded. Motion passed by roll call vote, 9-0.

### **21-W-REZ-2, Zone map amendment, AG to AGP, 767± acres in Washington Twp.**

Daniel L. & Deborah A. Michel requested a zone map amendment by reclassifying approximately 767.46 acres from AG, Agricultural District, to AGP, Agricultural Production District. The nine parcels were in Sections 19, 20, 27, 30, 32, 34, and 35 of Washington Township.

Mr. Bilger presented the staff report. He presented a map of the subject properties, noting that most of the properties were of sizable acreage, but one of the parcels was an adjacent sliver. He stated that one of the properties currently has a single-family dwelling and a Class 2 CFO, and that the remaining properties are in crop production. He said that one property, at the northwest corner of S. 250 West and W. 900 South has significant floodplain. He briefly covered the differences between the AG and AGP zoning districts, including a discussion of permitted and special exception uses in each district. He presented maps and aerial images describing the subject properties and surrounding area. He discussed the rezoning review criteria and stated that the proposal seemed to fit most of the criteria.

Mr. Bilger asked the Commission if it had any questions. Mr. Wolfe asked him to identify the property with significant floodplain. Mr. Bilger identified the property with significant floodplain. Mr. Wolfe and Mr. Bilger discussed floodplain regulations.

Hearing no further questions for Mr. Bilger from the Commission, Mr. Hodges asked the petitioner or its representative to address the Commission.

Brian Michel, 8822 S. 350 West, South Whitley, stated that his family is pursuing rezoning of the subject properties to AGP to protect the land for farming into the future.

Mr. Hodges asked the Commission if it had questions for the petitioner. Hearing none, he opened the public hearing.

[Crosstalk] Mr. Michel stated that he has no plans for additional hog barns at this time.

Mr. Hodges stated that questions or comments should be made at the podium after identifying oneself.

Steve Stoltz, 10620 S. 200 West, Columbia City, asked Mr. Michel to define production agriculture.

Mr. Hodges stated that Ms. Deckard would need to administer the oath to Mr. Stoltz prior to proceeding. Ms. Deckard administered the oath to Mr. Stoltz.

Mr. Stoltz repeated his question.

Mr. Michel stated that he was referring to grain production. He said that he was not stating that he would not have additional hog barns in the future, but that he has no plans right now for such projects.

Brian Emerick, 5865 E. State Road 14, Columbia City, stated his support for the petition and added that the subject properties are in an area that is appropriate for AGP zoning.

Mr. Hodges asked for additional comments from the public. No comments were heard.

No on-line comments were heard. Mr. Hodges closed the public hearing and called for a motion or discussion. Ms. Green made a motion to approve 21-W-REZ-2; Mr. Emerick seconded.

Mr. Hodges asked for any further discussion.

Ms. Kurtz-Seslar stated that she is concerned that there may be a higher residential dwelling unit density per square mile around the subject property with a residence and Class 2 CFO than is allowable under AGP zoning. She added that she is troubled by the lack of empirical data presented to the Commission concerning potential negative externalities associated with CFOs, specifically negative impacts on surrounding property values and public health. She asked for a special meeting of the Commission to which experts would be invited to present findings regarding CFO impacts on surrounding property values and public health.

Mr. Drew stated that he disagreed with Ms. Kurtz-Seslar. He said that these discussions had occurred in the past and that assertions that CFOs have negative impacts on surrounding property values or public health cannot be proven. He disputed the veracity of one of the comment letters submitted by the public that raised public health concerns related to knifing in of manure and air quality. He stated that a lot of the comment letters submitted by the public were based on fear rather than fact.

Ms. Kurtz-Seslar asked that data concerning impacts on property values and public health of CFOs be included in staff reports of future petitions to rezone to AGP.

Mr. Wright stated that the petition before the Commission was for a rezoning to AGP and that it is not to approve a new CFO or change their current operation in any way.

Ms. Kurtz-Seslar reiterated her request for data concerning impacts on property values and public health of CFOs be included in staff reports of future petitions to rezone to AGP.

Mr. Drew stated that these are not new questions and added that CFOs do not pose negative impacts on land values and public health. He reiterated that these issues had been examined in the recent past. He said that this petition is being made to protect petitioner's right to farm.

Ms. Green stated that discussion of potential impacts on surrounding property values and public health is not new, that farm preservation and maintaining the rural character of the County is important. She said that she is not aware of any data specific to Indiana. She added that, although she is not speaking for the other Commissioners, she would vote in favor of this rezoning.

Mr. Wolfe stated that he is aware of a CFO study performed by Purdue University in the recent past that contained some of the data that Ms. Kurtz-Seslar is requesting. He stated that these

issues have been discussed at length over the past few years. He stated that the Commission decided in 2018 to adopt the same regulatory standards for CFOs set by the state.

Ms. Kurtz-Seslar requested a copy of the study referred to by Mr. Wolfe. Mr. Bilger stated that he would confer with Mr. Wolfe to determine exactly which study he was referencing and would provide that study to all Commission members. Mr. Wolfe stated that it was the study that was used by the Code Development Committee in 2018.

[Crosstalk] Mr. Hodges asked Mr. Bilger if it was appropriate to reopen the public hearing for additional public comment. He stated that this was at the Commission's discretion. Mr. Hodges reopened the public hearing.

[Crosstalk] Mr. Hodges stated that there is a motion and second on the floor. Ms. Deckard stated that the motion and second need to be addressed. [Crosstalk] Mr. Hodges asked Ms. Green to repeat her motion. Ms. Green stated that she made a motion to approve 21-W-REZ-2. Mr. Hodges stated that a second was on the floor and that the Commission was currently engaging in further discussion. He stated that if Mr. Emerick has something pertinent to add to the discussion before the motion went to a vote, he should be able to do so. Ms. Deckard stated that the Commission is free to reopen the public hearing, but that it must be reopened to the entire public and that the motion currently on the floor still needs to be addressed. Mr. Hodges stated that was suspending a vote on the motion and reopened the public hearing.

Brian Emerick, 5865 E. State Road 14, Columbia City, stated that the current discussion is exactly why farmers want to rezone to AGP. He stated that people moving out of Allen County and into Whitley County are placing residential development pressure on Whitley County farmers. He stated that he and fellow farmers have been accused of being selfish, but that he believes that people who buy a few acres in the country to build a house and then try to stop their neighbors from practicing livestock or crop production are being selfish. He stated that CFOs are already subject to oversight from IDEM and the County Health Department. He said that one could argue that dust could make one sick, and that, if one has a problem with dust, they better not live in the country. He stated that many studies have been done on the impacts of CFOs, some valid and some not valid. He added that the Commission should protect farms and agriculture.

Mr. Hodges asked for additional public comment. Hearing none, he closed the public hearing.

He asked if the Commission had any further discussion prior to moving forward with a vote on Ms. Green's motion.

Hearing none, he asked for a vote on the motion.

Mr. Bilger asked Ms. Green to clarify whether her motion was to forward a favorable recommendation of 21-W-REZ-2. Ms. Green affirmed that it was.

Motion passed by roll call vote, 7-1-1, with Emerick, Drew, Green, Hodges, Wolf, Wolfe, and Wright voting in favor, Bemis voting against, and Kurtz-Seslar abstaining.

## **OTHER BUSINESS**

Mr. Bilger stated that Ms. Kurtz-Seslar brought to the attention of Staff an email that was sent to some, but not all, of the Commission members pertaining to topics that are regularly addressed by the Commission. Mr. Cullnane distributed the email in question to Commission members. He

discussed ex parte communications as they relate to a Board of Zoning Appeals, and stated that, although such communications between the public and members of a Plan Commission are not expressly outlawed by statute, there are ethical and practical considerations that should be considered. Ms. Deckard stated that members should be wary of communications from the public that are not shared with the entire Commission, and that any such communications that pertain to issues before the Commission should be shared with Staff so that they can be distributed to the remainder of the Commission. She stated that transparency is the best approach in these situations so that the entire Commission is aware of what is happening. She offered her assistance to the Commission if it had specific questions or needed further guidance.

Mr. Hodges asked Ms. Deckard if it was correct that she was saying that a member should not engage in private conversations with the public that do not include the entire Commission, but in the event they do, the member should notify Staff so that the remainder of the Commission is aware of what was happening. Mr. Hodges stated that he felt it should be fine for members to have private conversations with the public pertinent to issues before the Commission. Ms. Deckard asked the Commission to look at the email that was distributed. She stated that the problem is that the email discusses issues that regularly come before the Commission and is not addressed to all members. She said that the email in question is a good example of a communication that should be shared with the entire Commission.

Mr. Bilger stated that, if a Commission member receives a communication about a pending case, this communication should be shared with Staff so that it can be distributed to the remainder of the Commission. He said that it is part of the nature of being on the Commission for individual members to perform research on a case, and that it is expected for the individual member to share with the remainder of the Commission anything discovered that is salient to the case. He stated that, even though there is not currently a pending docketed petition that deals specifically with the matters raised in the email in question, the content of the email pertains to matters that regularly come before the Commission thus making it suspect. He stated that general communications from entities such as trade associations that deal with issues that regularly come before a Plan Commission are a different matter than the email in question, unless it pertains to a pending docketed petition. If this is the case, then a member should share such communication with Staff so that it can be distributed to the remainder of the Commission.

Mr. Hodges thanked Ms. Deckard and Mr. Bilger for their explanations of the issue. He asked Ms. Deckard if it were correct that it is not a violation for a number of members that would constitute a quorum to congregate to discuss a topic, so long as that group did not conspire to come to a conclusion or make a decision relative to appending docketed petition. Ms. Deckard stated that she wants to confirm before providing a final answer, but that her recollection is that a scenario such as that presented by Mr. Hodges would not be a violation. She added that she is concerned specifically with the email in question because the content is dangerously close to what would be presented at a Commission meeting that is subject to a public hearing.

Mr. Emerick asked if similar emails should be forwarded on to Staff. Ms. Deckard affirmed that they should. Mr. Bilger added that Commission members can use their discretion to determine if a communication appears to be inappropriate. Ms. Deckard stated that, if a communication contains information pertinent to a subject that regularly comes before the Commission, this information will likely be useful to the remainder of the Commission and should thus be shared. Mr. Hodges stated that he was a recipient of the email in question, but that he did not feel that it warranted a response and so he did not respond or pass along to Staff. Mr. Bilger stated that Staff

would share the email in question with Commission members who were not physically in attendance at the meeting. Mr. Bemis asked if he should notify staff in the future if he intends to attend meetings virtually. Mr. Bilger affirmed that he should.

### **ADJOURNMENT**

Being no further business, Mr. Hodges declared the meeting adjourned at 8:25 p.m.

### **GUEST LIST**

1. Sonya Emerick .....5865 E. State Road 14, Columbia City
2. Brian Emerick .....5865 E. State Road 14, Columbia City
3. Emily Studebaker.....5147 W. 200 South, Columbia City
4. Deb Michel.....8980 S. 350 West, South Whitley
5. Dan Michel.....8980 S. 350 West, South Whitley
6. Shannon Michel .....8822 S. 350 West, South Whitley
7. Brian Michel .....8822 S. 350 West, South Whitley
8. Steve Stoltz .....10620 S. 200 West, Columbia City
9. Steve Pohler .....2090 W. State Road 114, Columbia City
10. Gil Kumfer .....4365 E. State Road 14, Columbia City
11. Joe Heerendeen .....14033 Illinois Road, Fort Wayne
12. Chad Snyder.....9375 S. 350 West, South Whitley

### **GUEST LIST-ELECTRONIC**

13. Tim Denihan .....1495 W. 1000 South, Columbia City
14. Kurt Kehmeyer.....8244 S. 600 East, Columbia City
15. Robert Kehmeyer.....8411 S. 600 East, Columbia City
16. Judy Kehmeyer .....8375 S. 600 East, Columbia City
17. John Meister.....5995 S. Woodstrail Drive-57, Columbia  
City
18. Rob Michel.....343 W. 1000 South, Columbia City
19. Joan Null .....8099 S. 200 East, Columbia City
20. Judy Rhoads .....3459 W. 800 South, South Whitley
21. Bruce Trabert .....748 W. 1000 South, Columbia City