

APC MINUTES**JUNE 17, 2020**

Members present: Steve Hernly, John Reece, Andy Fahl, Don Calhoun, Jim Hufford, Terry Alfrey, Tom Kerns, Gary Girton

Members absent: Aaron Stephens, Amy Alka, Bryn Albertson, Bob Lahey, Adrian Moulton

Legal Representation: Jason Welch

Staff Present: Randy Abel, Executive Director, Debra Johnting, Recording Secretary

Others present: Ed Thornburg Jim Schowe, Scott Shaffer, Todd Longfellow, Greg Beumer, Gary Foulke, Tom Chalfant

President Calhoun: It's 7 o'clock now. Let's go ahead and get started, let's approve the minutes of May 20th.

D. Johnting: The zoom minutes are not done yet, I will have them next time.

President Calhoun: Ok, the next item of business on the agenda is the discussion of the solar ordinance. Where do we need to start at?

R. Abel: It depends on how you want to approach it, Jason and I were talking earlier and we could go through each section pretty quickly, especially on the non-commercial. This is basically for the board members to say something. And when were all through we should get comments from the audience.

President Calhoun: Ok.

R. Abel: So, I would say if anyone in the audience has a question, try to jot it down and save it to the end and we'll open it up to the public for comments at the very end. So, if everyone up here has their ordinance, just a basic oversight, or overview of it when we wrote this we tried to organize it a little differently so the first part is just general things that are pretty much straight out of the wind ordinance. The intent, purpose things like that. The next part is basically referencing non-commercial, and the latter part of it is related to commercial. So there are some duplicate areas in here, you'll see, so if you're looking for commercial information you look under this section, if you're looking for non-commercial you look under this section and it makes it longer having to duplicate some things but it sure makes it less confusing. So that was our thinking in doing that. And I will give you a little of the purpose of this. When we were working on the ordinance the committee basically took dozens and dozens of ordinances and took many examples and put them together. So, if you like number one from this ordinance, and number two from this one and so on. So it's a combination of a lot of other ordinances.

Randy went on to give an overview of the different parts of the ordinance and what each of the zoning designations mean. He explained the abbreviations in the table. Starting at 19.6 is the non-commercial regulations. He went over the sections explaining solar rights, interference in 19.6.11, getting an easement from neighbor. He talked about roof mounted versus wall mounted and ground mounted, and

restrictions and property values that go along with that. He explained the reasons behind putting it in the rear, front facing and stated again that solar was encouraged. Three feet from the peak is Indiana Code.

All setbacks and height restrictions should be what they are in your particular zoning district. Ground mounted will be treated like an accessory structure, and based on your particular zoning requirements. 19.6.13 is regulations are mentioned here. 19.6.14 Randy explained restrictions and the waiver process, electrical components and the types of panels that can and should be used. 19.6.15 is electrical components. Do we not want to allow Cadmium panels? There are three basic types of panels and Randy took some time to explain these. Even though solar panels have circuitry, they are not considered electronics and can be discarded in the land fill. He stated his concerns for the land fill and putting cadmium in the there. He explained the TCLP test. He has contacted the local landfill, and even though it passes the TCLP test from the federal government, they still don't have to take them. When it's a commercial project. From individuals they would have to take. They have strict regulations they have to meet from IDEM. If their water well starts showing up with some of these chemicals I think they are in deep trouble. So they can protect themselves with commercial but they can't with non-commercial. So, it's my recommendation we put something in there about not allowing cadmium panels. Just to protect our landfill in Randolph County, if that's reasonable to everybody on the board?

J. Hufford: Yes, we talked about that last time.

Randy went on to explain utility interconnection and glare. 19.6.17 part c, proving glare. Randy didn't know if he wanted that much responsibility. They still have option to litigate in court. Potential to mitigate before people got huffy and went to court. And even when my decision is final everything in here can be appealed. And if I don't want to make a decision I will just send it to the BZA. Comments?

The other was signage, why would we regulate that when we have the sign ordinance? Randy explained the loophole as the solar area got bigger, enough to consider commercial. He explained there would be no advertising on the fence, except for the company who it belonged to.

Application process. Demonstration of energy needs. Cannot put in more solar panels that what you need. And shall conform to current Indiana Residential Code set out in 675 IRC 14 and or the current Indiana electrical code set out in 675 IRC 17. So, any time they change codes that changes. So that was requested.

Solar easements. The majority of that is straight out of Indiana code, IC32-23-2-5. That's what allows you to go to the neighbor to make sure they don't plant a pine tree and block your solar. Randy explained some issues with the terms of the agreement.

Improvement location permits. Gives director more leeway and guidance on larger arrays, to go to commercial standards if needed.

19-6-3-2 C. If you read over this, 180 days is really long, it was suggested that we reduce to 30 days on a public nuisance. So, how long should we allow them to fix it? Jason suggested good cause. There was discussion on how long to fix, it was decided to make it 60 days.

Randy called for questions on the non-commercial part of the ordinance.

On the commercial section and the comment sheet from EDPR. In response to this the commissioners came back with a recommendation on those comments. So, the comment was made in the solar committee that the real meat and potatoes of this ordinance are the setbacks, the landscaping and the buffer. And how is this going to have an impact on a solar farm. 19-7-1-2 setback requirements. Randy discussed setbacks, access lanes. Access lanes were deferred to local fire chiefs of Randolph County. They are in the process of doing this. Charlie Nicholson gave Randy the code regarding the ingress/egress road for emergency vehicles. Randy wanted to get them involved for their feedback on this as he said they are on top of codes and requirements for utilities like this. Randy wanted to clarify information on drainage. Anything that carries water should not be impeded. I think that's pretty clear and the companies all understand.

On ingress/egress roads and 50' distance to roads. There is a hearing required if you are in city limits.

Buffer strips, screening and vegetation. EDP had some requests on changes. Number 3 and number 5, plus recommendation from the commissioners. Randy discussed setbacks and access roads. He went on to discuss setbacks in each area, agriculture, residential, public use, commercial and industrial. He discussed special exception distances for commercial and industrial, and transition yards between districts. He discussed use versus zoning. He explained about the setbacks on public streets, road and right of ways, and that EDPR wants these reduced so as not to waste ground. He wanted to know if the board wanted to make a distinction between which road it's on as to the setback. He had photos of solar panels in other cities with large setbacks on local roads. In Randy's research, he has determined that Randolph County will be the only solar ordinance in the country that will not require a hearing for a commercial solar energy project. EDPR has stated that this is not about being green energy, it's about producing cheap energy, and as a corporation they are looking after their shareholders and get the most profit they can get. Randy said he thinks it's important that we look at this that we are protecting the shareholders of Randolph County which is the taxpayers and the residents. They are looking at their shareholders, and we are looking at ours and that's not to say that we can't come together in the middle and that's what we are trying to do here and that's what we want to do here, is to find that middle ground that everybody can work under. So we are not doing things to hurt their bottom dollar, we are doing things for the health, safety and welfare of the people of the county. And that's not to say that everything in here is perfect as far as distances and all that, but that was our thinking anyway. So I don't know about B, I don't have much opinion on that. And actually I don't get a vote so my opinion doesn't matter—to actually tell someone they can't take trees down on their ground. That was put in from another ordinance perhaps for “tree-huggers”.

Randy explained about the ordinance on trees. Jason didn't think that enforcement was possible to make people replace trees they had cut down for solar energy. How would you know that they had cut trees down in the time period required? The group decided to remove the section on cutting down trees. If trees are there due to a previous commitment for a transition yard they may not be removed.

Randy discussed “opacity”. He said that he was told that “density” would be easier to enforce. So, per the landscapers he spoke to, they recommended “dark green, American Arborvitae” at four foot spacing and that would be a density description that we could put in there as opposed to the opacity. This was recommended by the commissioners and EDPR to make it easier to follow the recommendation of the ordinance. The group agreed to go with density. Ag Intensive does not require

screening and landscaping. All other districts require buffer, screening and landscaping. ii describes screening to a residential use. That would be any parcel platted five acres or less. Randy described the potential for screening on a residential property. Instead of looking “industrial”, trying to get EDP to screen with natural vegetation.

Randy talked about buffering in C-1 and C-2. You can’t waiver less than transitional yard in the ordinance. Discussed buffering in M-1 and M-2, and buffering by use instead of zone as many of our zones are mismarked. If it’s in the ordinance you can do that.

Randy talked about waivers on buffer and landscaping by adjoining landowners. So that allows them to do waivers.

The landscapers we talked to thought our standards were too high so we were asked to reduce the height from 10’ in three years for trees, so we reduced that to 7’ in three years. To obtain a maximum height. Invenergy asked that the height of the solar panels be changed to 18’. So if you look through your ordinance that has been crossed out already, if you see something that should be left in let us know.

Randy talked briefly about wild flowers under solar panels, dead plants, taking care of plants under the panels.

Color, finish and glare discussion. EDP had issues with that and wanted it changed. Discussion followed.

Discussion on sewer and water, utility connection, signage.

A solar energy facility are not utilities, and Randy gave an explanation.

Access for emergency services.

Discussion on noise.

Discussion in ingress, egress and emergency access road. Leave up to approval of the Fire Chief Association. All photos we have seen have roads either gravel or grass around the facilities the size of this one.

On adverse effects we decided to go with the commissioners recommendations to remove. If someone is going to sue they would sue and trying to mitigate that would be a waste of time. We took out “with the recommendation of the county commissioners”. (This was end of tape and the rest were from notes that were made by Deb and Randy).

Individuals from the audience spoke and the majority in attendance were in favor of having native species planted. Someone from the Red Tail Conservancy spoke and encouraged non-invasive species and plants that were native to our area. Others spoke in favor and also commented that they would like to see native plants.

Matt Price (attorney for EDP) and Chris Beasley (Project manager for EDP) spoke and they were requesting that Ag Limited be open to develop with no variances needed. A compromise was

suggested to perhaps allow a waiver for that instead of having a special exception hearing. They were also concerned about the setbacks on the highway. There was discussion on the right of way of the roads but no decision was reached.

Debra Johnting read comments from Nancy Francis' phone call. Nancy was against the solar installation.

Wording was clarified on the placing of ground mounted and commercial SES into a storm water conveyance systems. Includes drainage tiles.

There was discussion on allowing cadmium panels and it was decided that they were not allowed.

Randy left "glare" in non-commercial 19-6-17.

Solar easements leave b i-v which had been a concern.

In section 19-6-32, C it was decided to change 180 days to 60.

Change wording to include 19-7-12 d, which was underground ditching.

Setbacks were discussed and decided to take the 400' to a house, 40' to property line with screening and 20' to property line with waiver.

It was decided to remove references to clearing 19.7,13 "vegetation"

Change reference to opacity to density.

Discussed making the table apply to "residential uses" instead of residential districts

Burial depth for cables was changed to 48", inside the fence is referenced to the national electric code.

c-19-7-16 color finish and glare take out c.

There was brief discussion on construction waste management, ultimately taking it out.

There was discussion on the recycling of cadmium.

Take out under "performance guarantee" take out the value of the salvage, the clause that says 50k and irrevocable letter of credit.

There was discussion on having a Licensed Indiana engineer or just an engineer.

Discussed the 5 year for the plan.

Previous notification, if laws are changing we won't know ahead of time.

Economic development wanted to take out permission from the county council.

Take out payment in lieu of taxes.

There was some general discussion about the solar installation.

President Calhoun: Well, if there's no other business, I will entertain a motion to adjourn. It has been moved and seconded to adjourn. Thank you everyone for coming.

President, Don Calhoun

Vice President, Andy Fahl

Recording Secretary, Debra Johnting