

**MINUTES**  
**DEKALB COUNTY PLAN COMMISSION**  
**Wednesday, June 21, 2017**

The Regular Meeting of the DeKalb County Plan Commission was called to order at 7:00 P.M. in the Commissioner's Court of the DeKalb County Courthouse by President Tim Griffin.

**ROLL CALL:**

**Members Present:** Tim Griffin, Sandy Harrison, Jerry Yoder, Frank Pulver, Elysia Rodgers, Randy Deetz, Sarah Delbecq

**Members Absent:** Mike Kline, Bill VanWye

**Staff Present:** Plan Commission Attorney David Kruse, Director/Zoning Administrator Chris Gaumer, Assistant Director Dawn Mason & Secretary Karen Bassett

**Community Representatives Present:** Mark Benbow – City of Auburn

**Public in Attendance:** Joshua Lash, Tim Haynes, Steve Kelham, Austin Phillips, Brian Phillips, Brad Grate, Allen Holman, Jason Schmucker, Chris Schmucker

The Pledge of Allegiance was led by the President.

**APPROVAL OF MINUTES:**

Motion was made by Sandy Harrison and seconded by Jerry Yoder to approve the May 17, 2017 minutes. Motion carried.

**CONSIDERATION OF CLAIMS:**

Motion was made by Frank Pulver and seconded by Elysia Rodgers to accept the May claims as presented for \$10,028.72. Motion carried.

**OLD BUSINESS:**

A public hearing was conducted pursuant to proper legal notice

**Petition 17-05** – Nancy Treesh requesting a minor subdivision.

Chris Gaumer advised this petition was continued from the March meeting. He stated when it was continued Dawn Mason sent a letter to Mr. Sexton that stated it was continued to this June 21, 2017 meeting and would be required to send new letters to the interested parties, which was not done. Re-notification is required when it is past one hearing date per the Rules of Procedure for the Plan Commission. Staff received copies of the revised plat that came in last Wednesday, June 14, 2017, which was after the date the packets were sent out and after an email Mr. Gaumer had sent to him on May 26, 2017, stating the deadline to get the information to staff. Sexton and Associates did send the revised plats out to the Health Department, Highway Department and Surveyor, which staff did get letters of approval for. It is up to the Plan Commission to decide if this petition will be heard tonight. The Board can suspend the rules, not requiring them to send out the notifications, or the Board can continue it again to next month and require the notifications to be sent out.

Josh Lash from Sexton and Associates stated he was brought into this as a third party. Mr. Lash did the survey and technical part of it, but everything else has been out of his hands. However, he stated the hold-up was not getting a soil scientist out to the site. Nancy Treesh is an elderly

woman and it took her awhile to get things done. We meet all of the requirements for the Highway Department, Drainage Board and the Health Department and believe we meet all of the ordinances for DeKalb County. He would appreciate it if we could get this done tonight, but understand it is up to the Plan Commission.

Mr. Gaumer stated because we got the new plat on Wednesday and the packets were sent out Tuesday, the Board is seeing it for the first time today.

Mr. Lash stated the plat has stayed exactly the same, except we bumped out in the back where the new soil borings are.

Mr. Gaumer said it is up to the Plan Commission to decide what to do. They can suspend the rules and hear it today. This is one of those where we were going through staff transition and I believe Mr. Sexton was told one thing before new staff came on. The letters have been received, but we did not receive a revised plat until the Wednesday before this meeting, which was enough time for Mrs. Mason to review it, but still has a couple of corrections that need to be made. It is my recommendation we look to what Mr. Kruse advises we do from a legal standpoint.

Mr. Kruse stated it is a bad precedent not to have the requirements met. Historically, we need to have these ahead of time so we can look them over. This puts everyone on the spot here now, to try and look at this. Do we have Mike Kline's input on the revised plat?

Mr. Gaumer stated yes, but it is not in the packet because it was just received.

Mr. Kruse stated all of these things are to be legally on file at the Plan Commission office 10 days ahead of time, so anyone can come and look at them.

Mr. Kruse stated the Plan Commission can make the decision, but he recommends not waving the rules.

Tim Griffin said he agrees; he came in March and April and I talked to Mrs. Mason and advised if it isn't here by May 22, 2017 we are through with it.

Dawn Mason stated for the record, in the letter it was not stated everything had to be in by May 22, 2017, with the understanding that Mr. Sexton had done this for years and it was stated it would give enough time to get the soil borings done, the Health Department approval and that it will be added to the docket, as well as provide our department with any new plans, letters of approval and also sending out new letters. That information went out in the original letter in April and after the continuance an additional reminder was sent to Mr. Sexton with a copy of our rules of procedures that highlighted the notifications would need to be sent out. Josh Lash has worked with us through this as much as he could and there were multiple conversations when we were working with other projects. Unfortunately, we cannot do anything when we get a plat 7 days before the Plan Commission meeting, with them knowing notification based on our rules and procedures needed to be met. Mr. Sexton knew those mailings had to be out at minimum 10 days prior to the meeting.

Mr. Griffin said he agrees we need to follow the rules.

Mr. Gaumer stated we will need a motion to continue the case until the next meeting with the stipulation the re-notification needs to be met and all material needs to be in. 30 days is coming up fast.

Mr. Griffin asked if there were any other opinions.

Mr. Lash asked if each month it is continued, would we have to send out notifications.

Mr. Gaumer stated no, only if it is continued more than one consecutive month. Because it was continued for two months, the re-notifications were required and now that it is going on the third, it is required as well.

Mr. Gaumer said as long as we get all the information, then we can count June 26, 2017 as the cut-off date for getting us everything. The hearing would then be on July 19, 2017.

Motion was made by Randy Deetz and seconded by Sandy Harrison for a continuance to the July 19, 2017 Plan Commission meeting for Petition #17-05, Nancy Treesh. Motion carried.

Petition #17-07 – Confined Feeding Standards

Chris Gaumer, Director, stated this is a continuance from the April 2017 meeting. There was discussion regarding the minimum separation between residential, institutional, commercial and incorporated cities or towns from a confined feed operation. We looked at the CFO's we knew about and what the state has permitted as current confined feed operations. We also looked at ones that may be close to or may want to expand as a full CAFO. As seen on the map, we looked at what the distances would be of a 500 ft.(orange), 750 ft.(pink), 1000 ft.(lime green) and 1300 ft.(forest green) radius.

Mr. Kruse asked if that is a radius of the middle point.

Mr. Gaumer stated it is a radius from the outer foundation of that confined feed building. As seen from the aerials, the 1300 ft. is a pretty large distance. We received information from Inside Indiana Business and it references the amount of new confined feeds that are going to be coming into Indiana and how counties should be looking at it as an economic development standpoint. We still have to protect those people, cities and towns that have to live around these confined feed operations. These standards are not to hinder development or be anti-confined feed, but to be proactive instead of reactive, provided something happens in the future. Sandy Harrison asked if we are still looking at the 1300 ft. Mr. Gaumer stated no, this being brought before the Plan Commission to let them make that decision. One change under B, the minimum distance to existing confined feed operations for a new residence; exemptions would include the farm operator and/or their relatives.

Randy Deetz asked if I'm and owner/operator and I want to build a house, it will be exempt.

Mr. Gaumer stated correct, it is exempt.

Mr. Deetz asked if I have a hired lead man who wants to build his own house, he would not be exempt.

Mr. Gaumer stated only if he is a relative would it be exempt. We could add language that says farm operators and their employees.

Mr. Deetz asked about the one at the edge of Corunna.

Mr. Gaumer stated that takes out a large part of Corunna, but existing confined feeds wouldn't matter. They couldn't build any further towards the closest point. They could build further away as long as their radius isn't going any closer.

Mr. Deetz stated it does incorporate a large number of houses already and if they cannot build closer, what happens if they want to extend that building to the North. Are you saying they cannot extend the building to the North?

Mr. Gaumer stated correct. They could extend South or West, but not to the East or the North. Sarah Delbecq stated even if they went to the South and were in a 1000 ft. buffer, there would still be houses in the green circle.

Mrs. Mason stated we would have to take into consideration, the ones that are already pre-existing and will they be allowed to enlarge within that district no matter what direction they go.

Mr. Deetz stated that is most likely the case. We are not going to have a tremendous amount of new builds. We will have some, but most will be enlargement, like the set of buildings on 327 that is just outside the buffer zone, if they enlarge their operation will it be far enough away.

Sandy Harrison stated this is a problem because we are telling someone who owns that property and has a business; they cannot build onto that business in the way they want to.

Mr. Gaumer stated they could add another building, but all that does is increase the 500 ft. buffer. It doesn't mean they cannot build within it. It means this buffer would expand also. But, if there would be a residential development that would come in first and then they decide to expand and that 500 ft. buffer increases, they couldn't do that.

Mrs. Harrison stated she spoke to several large animal operation owners and they are concerned because most of them have thoughts of expanding, but they have neighbors.

Mr. Gaumer stated they could go through the Board of Zoning Appeals.

Mr. Kruse stated neighbors could waive their rights.

Mr. Gaumer agreed and said the Board of Zoning Appeals could approve that expansion. It is another step that the Plan Commission may or may not want them to go through. If they don't go that way, the Plan Commission is still going to hear the case as a Development Plan and if the neighbors come in and are saying we don't want this to expand, it could be denied at that point.

Mr. Griffin stated he didn't know when Aldrich's were there, how many of these houses were across the road and if they were there before the dairy farm.

Tim Haynes who represents Haynes Dairy Farm and Superior Dairy stated they all developed about the same time.

Mr. Griffin states he is already established and now there are people on the other side of the road. However, he is established first.

Mr. Gaumer said correct and it also means that a residence could not be built within that buffer as well, unless it's a relative or farm operator. It is not just the expansion.

Mr. Haynes stated we already have IDEM that takes care of CAFO's and CFO's, so part of the question is who overrides who if your numbers aren't the same.

Mr. Kruse stated the local authority cannot lessen the state requirements, but maybe could increase them.

Mr. Haynes stated it was explained to him that Indiana House Rule dictates that local governments do not have the authority to regulate areas already regulated by a state agency. In this case two areas fall within the jurisdiction of IDEM.

Mr. Gaumer asked if Mr. Haynes had that code or what that number is.

Mr. Haynes stated Mrs. Delbecq could probably get that for you because we got it from Andy Tower of Corn & Soy.

Mr. Kruse stated when you look at that code, make a distinction between regulations and zoning.

Mr. Haynes stated the challenge for us as a producer, if we start having different numbers regulated differently, you start muddying the water on your setbacks.

Mr. Gaumer stated that is another thing. Are you talking about the manure separation?

Mr. Haynes stated if you are talking about buildings, you talk about the foundation of the CFO building, but the nearest building boundary; in our case we put a new set up in and IDEM's requirements are is 100 ft. set back from property line. We are not a CAFO, but if we want to become one, we built to IDEM's requirements. We have a 40 acre property next to use that has a house in it, so where are you calling the property line. Are you calling the property line the 40 acres or are you calling the house. When you get to manure application, I think those numbers are different than IDEM.

Mrs. Harrison stated yes, they are different.

Mr. Haynes stated he understands why you are doing this as we all strive to be good neighbors. We have some fields that we have farmed for close to 150 years and over those years, manure applications have been put on. We fertilize a lot of the fields around the dairy. If someone sells something and builds a house and the requirement is 50 ft. off the boundaries and you pass these laws, we have to stay maybe another 200 ft. away hauling manure because this person built a house next us, which we have no control over. We don't want to stop people from coming out, but a lot of times, they understand about the building, but they don't understand about the manure application.

Mr. Griffin stated when they built the new house, they can't say anything. That is in their plat, they cannot say anything about how close you spread.

Mr. Gaumer stated there is an agricultural covenant.

Mr. Haynes stated if these setbacks are made larger, it will require us to stay further back. Would the house being built have to stay further back also.

Mr. Gaumer stated it will fall on the house owners also. If there is a set of confined feed animal buildings and they want to build next to it within whatever distance they would choose, they couldn't do that.

Mr. Haynes said manure application #E; you made this setback bigger than what IDEM is, so now you are requiring me to stay further away from my property line, because that house was built just 50 ft. on the other side of the property line.

Mrs. Harrison stated she looked it up; it's 355-7-3-3 and IDEM setback is 100 ft. from roadways, property lines and public roads and 400 ft. from residences.

Mr. Gaumer stated the more restrictive applies.

Mrs. Delbecq stated there is also the question as to whether the county can enforce manure application distances.

Elysia Rodgers stated the state chemist has a law on manure setbacks. They have certain distances for everything.

Mrs. Harrison stated if there are two sets of rules, why is IDEM at work? Most operations, even small ones, follow IDEM regulations.

Mr. Haynes stated we have had IDEM out and was told 90% of the investigation we have, the farmers are in compliance, it's because people don't know what the rules are. It is mostly related to smell. It speaks highly of the agricultural community from the standpoint they are doing what they are supposed to, but are running into issues where people who are removed generations from the farm and don't realize what living in the county means.

Mr. Kruse stated if the federal government has made regulations and laws in an area, then the state cannot. The same thing applies and we need to clarify what's in zoning and what's regulation, but if the state exercised jurisdiction, we would want to research that law. Maybe those regulations can't be changed.

Mr. Gaumer stated as a planner, we want to be proactive instead of reactive.

Mr. Kruse asked what the rules are for manure application. Does IDEM have rules?

Mr. Gaumer stated yes, IDEM does have rules.

Mr. Kruse said if we approve a CFO, we put a condition they stay in compliance with the state.

Mr. Gaumer stated correct, but we cannot enforce the States rules.

Mr. Kruse stated we cannot make up new rules different from the State.

Mr. Gaumer said the Plan Commission or Board of Zoning Appeals could apply additional conditions that say there is a cluster of homes so you need to stay 200 ft. from the property line rather than 100 ft.

Mr. Kruse said on the IDEM approval letters they have a clause that this is all subject to local zoning.

Mr. Gaumer said correct and the local zoning administrator can, even if we get an application from IDEM the year before we get a development plan, bring it to the Plan Commission and review it and send a letter back with our questions, comments or concerns.

Mr. Haynes asked if all CFO's are done by special exception.

Mr. Gaumer stated in the A1 & A2 they are permitted by right and A3 permitted by special exception and everything else would be a use variance.

Mr. Gaumer stated they are allowed up to 2 times the standards of IDEM.

Mr. Haynes said he would encourage the IDEM numbers be looked at. Regarding the Corunna property; if they had any growth, they would have to meet the CAFO requirements, so some of what is being discussed would come in to play if they applied for a permit. At this point they are not large enough to be a permitted farm. We are in the same boat; we did everything in our new operation by CAFO standards, but not required to have a permit because we are only 250 cows.

Mr. Griffin stated he feels we should stay with IDEM rules. Rather than having two sets of rules.

Mrs. Delbecq stated there are two parts to this. Parts A, B & C that are related to location of the operation and then the rest that is getting into how it functions, how it operates it's day to day.

Arguably, the County has jurisdiction over the first part, but the permitted operations defer to IDEM rules for the second part. The conversation should be focused on the first half and until we get clarity on what a county can do with respect to where IDEM already has rules. What a county can do is to determine whether the spot is a good one or not, not so much as how that permitted farm operates day to day because you have a state agency that takes care of that.

Mr. Deetz stated he agrees. We are getting muddled between zoning and regulations and we need to stay on the zoning side. He agrees with being proactive but those situations work wonderfully when you are in virgin territory or not have so much existing, non-conforming situations going into it. DeKalb County is an agricultural community and we need to make sure we do what we can to protect it. We need to discuss the top half of this, but the bottom half needs to be looked at very hard.

Mr. Kruse suggested that paragraph under B change to – Exemptions include the farm owner or operator.

Mr. Deetz stated that is important because with some of these duck and hog farms, the owner may be a corporate in Chicago.

Mr. Gaumer asked if it is the thought of the Plan Commission that D,E,F & G be removed, because IDEM has those regulations already.

Mrs. Rodgers stated I think we should retain D.

Mr. Kruse stated IDEM controls these waste requirements and we don't get involved in that or change requirements.

Mr. Haynes stated they also control the building requirements. The setbacks we had to meet for construction and manure storage; IDEM controlled those requirements also.

Mrs. Delbecq asked if IDEM is regulating what you can do within your own space. They don't say anything about there being a house 100 ft. away or a 1000 ft. away, they want your buildings a certain distance from your own property lines. Is that correct from an IDEM perspective?

Mr. Haynes stated correct. Greg Sliker from Farm Bureau and Andy Tower from Corn & Soy would be a good resource as to what they have seen throughout the state.

Mr. Kruse stated with regard to ditches, Farm Bureau has a complete set of guidelines and research they have done.

Mrs. Rodgers stated Mr. Tower and Mr. Silker have been up here in the past when we went through this before.

Mr. Gaumer stated that was for the addition of the use to the UDO. If it was the thought of the Plan Commission not to put standards in place, then that is fine.

Jerry Yoder stated we put a covenant on all of our lots informing new builders and new neighbors where the county stands on agricultural use.

Mr. Kruse stated covenants are something we can't predict for sure what they will be on a given case. Mr. Gaumer is trying to have some uniformity so they could look at something.

Mr. Yoder stated if it isn't broke, we shouldn't try to fix it. We shouldn't pursue trying to put more restrictions on construction around agricultural confinement sites. If we have the covenant protecting us stating it was put in when we allowed that plat, we don't need to pursue any further.

Mr. Haynes stated if you want hard numbers, you can use the IDEM numbers even though you are putting them into your own print.

Mr. Gaumer stated we wouldn't do that in case IDEM changes their numbers, then we would have to piggy back that as well and it would be constantly keeping up to date with language that could change all the time.

Mr. Deetz said there is a downside, if we have a room full of people saying we don't want this, and we don't have something to fall back on to say this meets all the criteria we have for a CFO to go into that position or it doesn't have all the criteria so it can't go in there. We don't want to hold up anyone from expanding and we do want to do everything we can to protect, which may be having some rules in here so a room full of people won't sway a Plan Commission or Board of Zoning Appeals in the future for not letting something happen.

Mr. Gaumer said he agrees. We get complaints all the time and a lot of it does have to deal with the Health Department or IDEM, etc. and there is no teeth the county has and then they wonder what we are doing if we aren't going to regulate it.

Mr. Griffin stated you are going to get a room full of people no matter what when we get expansion.

Mr. Haynes said it isn't the building site so much as it is the manure application and a circle can't be put around that very easy. We have fields that have had manure for 100 years and now we have 1 or 2 houses right beside them. Do we have to change our practices because these people decide to build there or do they have farther setbacks in those situations. Now we are getting into checking history to know if it has a manure application or not.

Mr. Kruse stated we put the clause in subdivisions that subject to the agricultural covenant to protect agriculture.

Mr. Gaumer asked if we want to continue this and look at additional numbers.

Mrs. Delbecq asked if we could form a committee to look more into it.

Mr. Kruse said you could table it.

Mr. Gaumer stated like the subdivision we are coming up to, we don't want to table it with the thought it isn't going to get passed anyway.

Mrs. Delbecq stated she is talking from an exploratory perspective; there are a lot of unknowns and we need to do more fact finding. There is merit in taking the proactive approach; but also

think that this is a really hard thing to land on a number that will fit all the pieces that are going to come up. We want to feel like we picked parameters that fit our county.

Brad Grate, Waterloo IN, stated he appreciates what is being said and the caution that is being used toward the restrictions. He has a dairy farm north of Waterloo. He had a neighbor a couple of years ago who was having a party and asked that we not spread manure for a couple of days before the party. We try to be good neighbors and we try not to offend them.

Mr. Kruse asked how many cows he has.

Mr. Grate stated about 200 – 220.

Mr. Kruse stated he heard he was thinking of going to 500.

Mr. Grate stated it is not out of the picture.

Mr. Griffin said that is a situation where you have a neighbor that wants to work with you.

Mr. Deetz stated we want to have some good common ground and it is crucial we work on it because there will be a time someone comes through the door and we don't have the right things in place.

Mr. Griffin stated it is unclear what kind of committee we are going to get, but if anyone in the audience can contact Mr. Gaumer, Mrs. Delbecq, Randy Deetz or himself.

Mr. Gaumer stated we will get something set up in the next couple of months.

Mr. Griffin asked if there were any other questions from the public. There were none.

A motion was made by Sarah Delbecq to table this petition to a later date and seconded by Randy Deetz. Motion carried.

A short recess was taken at 8:03 p.m. and the meeting resumed at 8:09 p.m.

Petition #17-15 – John Schmucker requesting a Vacation of White Pine Estates  
Dawn Mason, Assistant Director, read the report into the record.

Mr. Gaumer stated the only thing they built was the pond to the north.

Mr. Kruse asked rather than selling the lots they want to hunt and fish.

Mrs. Mason stated correct.

Mr. Deetz stated he did not see the drainage letter.

Mrs. Mason stated there is no drainage letter because in Plat Vacations they do not issue Drainage Board letters. The Surveyor does get it in the technical review, but there is nothing for them to approve or deny.

Mr. Kruse asked Randy are you saying as a member of the Drainage Board, you don't see any problem with the vacation.

Mr. Deetz stated the only reason he brought it up is because sometimes if there is a drainage issue, it is an opportunity to get some cooperation to get it done.

Mr. Kruse asked if there is a covenant or something for the water bodies.

Mr. Deetz stated no, he was just interested in reading the Drainage Board letter because if there was one.

Mr. Kruse stated when the plat is vacated, all covenants will be vacated. Mrs. Mason stated yes, they are vacating everything.

Mr. Kruse asked if there was a covenant for protecting neighbors on ponds leaking.

Mr. Deetz asked if there is a pond or just retention.



Allen Holman, representative to the Schmuckers, stated Jason and Chris Schmucker are here tonight. Regarding the ponds, on the 40 acres, on the back part of that pond, on 3 & 4, they can't be accessed unless you go around through the other two that are next to them. When they did this, John was reserved about what he wanted to do and the boys since then have said they want to vacate the whole property, farm it, doing some hunting and keep it the way it is.

Mr. Gaumer asked if there were two ponds.

Mr. Holman stated no just the one to the North and it hasn't been finished.

Mr. Gaumer stated there is a covenant about pond and water surface detention, so that would then be vacated.

Mr. Kruse stated there would be no control over that and there wouldn't be a permit for it.

Chris Schmucker stated a permit was issued when they first started and the reason we didn't finish, we didn't want to spend that much money.

Mr. Gaumer asked if he knew when the permit was first issued.

Mr. Schmucker stated it's probably been 4-5 years ago.

Mr. Gaumer stated that has now expired. So if they would continue to dig, they would need a new pond permit.

Mr. Kruse stated the ponds that are out there now were approved as part of the plat. Vacating the plat is vacating the right to have a pond there.

Mr. Schmucker stated there is no leakage from the pond that is there.

Mr. Gaumer stated if there would be any extraction of dirt, a permit would be needed.

Mr. Deetz asked if they currently farm the area.

Mr. Schmucker stated it is all grass.

Mr. Kruse stated they have been notified when they vacate the plat, they are vacating the right to the pond. If they want a pond, they have to come in for a permit.

Mr. Gaumer asked if that should be a condition of approval that gets recorded with the Vacation. A commitment is one they would impose themselves, but a condition is what we can give.

Mrs. Mason stated she would recommend doing it as a condition so we have it in writing when they are signing off, so they understand when they sign, they are releasing the right to do additional work on that pond.

Mr. Schmucker asked if they let the pond be as it is now.

Mr. Gaumer stated you can let it be now. You don't have to fill it in.

Mr. Schmucker asked to vacation this, do we need to come in and get a permit for the pond that already exists there.

Mr. Gaumer stated no.

Mr. Schmucker stated just if we would do something to it, we would have to.

Mr. Gaumer stated correct.

Mr. Griffin stated if they fill it in would they need a permit.

Mr. Gaumer stated we do not require a permit for fills. We would want to contact Mike Kline as far as the drainage goes, just to make sure there would be no issues.

Mr. Griffin stated we would also want to contact soil and water conservation. They might consider it a wetland now.

Mrs. Mason stated we would need to look at it to see how long it has been there, to see if it is on the National Wetland inventory list.

Mr. Gaumer stated contact us before you do anything.

Mr. Griffin asked if there were any questions from the public. There were none.

**Part I - Jurisdictional Finding:**

1. The petitioner has complied with the rules and regulations of the Plan Commission in filing appropriate forms and reports.
  - a. *Application completed and filed on 5/19/2017*
  - b. *Legal notice published in The Star on 6/5/2017 and affidavit given to staff.*
  - c. *Certificate of mailing notices sent and receipts given to staff and notice to each land owner in the Plat being vacated. YES*
  - d. *Letter from the County Board of Health, dated 5/24/2017*
  - e. *Letter from the County Highway Department, dated 5/19/2017*
  - f. *Letter from the County Surveyor or Drainage Board, dated N/A*
  - g. *Pursuant to I.C. 36-7-4-711 the Plan Commission has exclusive control over vacation of Plats or parts of Plats. Provided the County Commissioner's approval is also needed for vacation of public ways, streets or alleys. See I.C. 36-7-3-12. No Public Streets Involved*
  - h. *The Zoning District is A2*
  - i. *Is the vacation in harmony with the Comprehensive Plan of the County? Yes*
  - j. *Has the petition met the following requirements as stated in the UDO 9.25 F.2. (a) (b) & (c) and I.C.36-7-4-711(b):*
    - *Properly stated the reasons for and the circumstances prompting the request:*  
**Yes – Farming and Hunting**
    - *Specifically described the property in the plat proposed to be vacated:*  
**Yes - See Papers Filed**
    - *Given the name and address of every other owner of land in the plat:*  
**Yes - It's the owners of the lots on the plat**
    - *What covenants of record does Petition seek to vacate [I.C. 36-7-4-711(c)]?*  
**All**
    - *Have all land owners of the Plat been given an opportunity to comment [I.C. 36-7-4-711(e)]? Yes*

**Part II - Findings of Fact (Section 9.25 H(4)(a) & IC 37-7-4-711(f) (1-3)**

1. Have conditions in the platted area been changed so as to defeat the original purpose of the plat?  
**No longer desire to sell lots**
2. Is it in the public interest to vacation all or part of the plat?  
**No effect on the public. Helps preserve agricultural integrity.**
3. The value of the land in the plat not owned by the Petitioner will not be diminished by the vacation: **N/A**

**Part III: - In event of a protest, the remonstrator, needs to show evidence of the following grounds in UDO Article 9.25 H(3)**

- A. The vacation will not hinder the growth or orderly development of the unit or neighborhood in which it is location or which it is contiguous. UDO Article 9.25 (H)
- B. The vacation will not make access to the lands of the aggrieved person by means of public way difficult or inconvenient. UDO Article 9.25 (H)
- C. The vacation will not hinder the public access to a Church, School or other Public Building or Place. UDO Article 9.25 (H)

- D. The vacation will not hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous. UDO Article 9.25 (H)

**Part IV - Conditions imposed by Plan Commission I.C. 36-7-4-711 (g):**

1. Are there any drainage covenants? **No**
2. Are there any land use conditions? **No**
3. There is not an adverse effect on the public health, convenience, safety, morals or general welfare: **Correct**
4. Vacation of the plat vacates the permission for any pond on the site. If a pond is desired Later on, an application for a permit would be needed.

**Commitments:**

1. Does Petitioner make any commitments? **N/A**

**Recital - Recordation:**

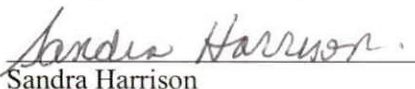
1. According to the UDO, a copy of this decision shall be filed with the DeKalb County Recorder's Office so that the Plat Vacation is made of record. The instrument for recording shall be approved by the County Attorney. Recordation to be done within sixty (60) days of when the Zoning Administrator deems any applicable conditions have been met.
2. Zoning Administrator will determine when conditions are met before recording of plat.

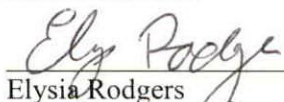
Motion to approve Petition #17-15 was made by Jerry Yoder, seconded by Sandy Harrison.

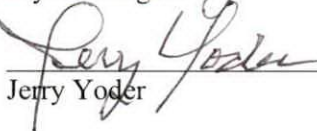
IT IS THEREFORE, THE DECISION OF THE PLAN COMMISSION TO ADOPT SAID FINDINGS AND THAT PETITION # 17-15 TO VACATE **WHITE PINE ESTATES**, IS **APPROVED** ON THIS **21ST DAY OF JUNE, 2017**.


Vote tally: Yes: 7                      No: 0

  
Timothy Griffin

  
Sandra Harrison

  
Elysia Rodgers

  
Jerry Yoder

  
Randy Deetz

  
Frank Pulver

  
Sarah Delbecq

Petition 17-16 – Subdivision Standards

Chris Gaumer, Director, met with members of the Plan Commission and also discussed with Mr. Kruse. He stated everything was brought forward that was presented with the original subdivision standard changes. He read the changes into the report.

Article 11: Definitions – Changing the parent tract date to January 1, 2009. This will better help us find when parent parcels are created and we are finding many subdivisions were done prior to the new UDO, so standards were different.

Subdivision definition changes, stating what a minor and major subdivision is. If this can get passed, the next process is to look at the overall subdivisions we have and see if there is a need for the different types of subdivisions.

Article 1: Establishing Buildable Lots. Two sections in the UDO that state when a buildable lot was legally established.

Mr. Kruse asked if it is stated that you cannot have two residences on one lot.

Mr. Gaumer stated yes, that is in another section of the UDO.

Article 2: Zoning Districts & Regulations. Changing the minimum lot area to 2 net acres, which does not include any dedicated right of way or recorded easements. This will stay cohesive with what the Health Department is doing. They require a minimum 2 acres without right of way and without any utility, drainage easements, etc.

Mr. Kruse stated this would help keep the public from being confused.

Mr. Gaumer read Article 6: Subdivisions - Change to meet the district development standards that currently apply.

Mr. Gaumer advised the Primary Plat – changes to exemptions for 1 lot through 3 lot minor subdivisions are administratively approved through the technical review committee. They are being seen by the Surveyor, Health Department, Highway Department and also by other city and county departments throughout the county.

Mr. Gaumer read through all 9 exemptions proposed.

Mr. Kruse stated regarding exemption #4 and the power of the court; we need to say the court has to comply with the subdivision ordinance. They do not have the power to change the zoning.

Mr. Gaumer stated any land being divided pursuant to a court decree, a copy of such court decree is required. Mr. Kruse stated regarding #6 and cemetery plots; do they have to come in for a special exception.

Mr. Gaumer stated cemeteries aren't exempt from the UDO, they are exempt from the split approval, so they don't have to come in for all the small lots.

Mr. Kruse stated regarding #8 and cell towers – didn't the county pass some sort of ordinance for cell towers.

Mr. Gaumer stated they had to be buried.

Mr. Kruse stated and if they are not they have to get special exception.

Mr. Gaumer stated no.

Mr. Kruse stated there is a loop hole in that.

Mr. Deetz stated we tried to close that by making it they cannot have a tower.

Mr. Gaumer stated that is for right of way only and this is for private land.

Mr. Kruse asked if a land owner who has 20 acres and wants to put a cell tower in a 5 acre plot, he can put that in there without doing a plat; he doesn't have to subdivide that out.

Mr. Gaumer stated it would be a meets and bounds parcel.

Mr. Kruse asked if there are any examples for #9.

Mr. Gaumer stated if someone needs to buy property for an additional septic system, it isn't connected to their property and they are getting approval, but cannot build on it.

Mr. Deetz stated this would not have anything to do with me having an 80 acre parcel and I sell 40 off. We don't have to do anything, correct.

Mr. Gaumer stated correct.

Mr. Deetz advised he has tried to follow along and stated we are not requiring letters to be sent out, is that correct.

Mr. Gaumer stated correct. They would still have to meet the UDO standards and go through the technical review process, but letters to the surrounding would not be sent.

Mr. Deetz stated if it is a simple division, they are exempt, correct.

Mr. Gaumer stated correct. They would still need to come to our office and get approval; however, they would not come through the Plan Commission.

Mr. Kruse asked if anyone else has questions or understands.

Mrs. Delbecq stated why there is not a middle ground.

Mr. Gaumer stated because it came back to the tracking aspect. If someone brings in an exempt division and we say they are exempt from the process but they still have to send out notifications to the neighboring owners and give them 10 days to respond, we are going to be tracking a lot of mailings; who sends them out, who receives the tracking? A lot of property owners don't live in DeKalb County, so how do we make sure that gets done? Do we do it by certificate of mailing or certified mailing? If we are going to do the notifications, we may as well have them come to the full Plan Commission. Currently, the tracking is a definite date with the Plan Commission meeting. Once we start allowing people to send them out when they submit it, then we are tracking several dates.

Mrs. Delbecq asked if someone had a concern about something that was in the pipeline, would they have any recourse to come before the Plan Commission if they really felt they had something?

Mr. Gaumer stated if they brought a legitimate concern and it was in the pipeline, we would then funnel it to the Plan Commission.

Mrs. Mason asked where that is stated.

Mr. Gaumer stated it is under J.4. – The Zoning Administrator has the authority to require an exempt division to go through the Plan Commission as a Subdivision if the division has not first been approved.

Mr. Gaumer stated splits often go through the Transfer Office and we don't know they are being divided. The splits have already taken place and we are just approving that it can be buildable. We have talked to Jan Bauman and she is on board, if this gets passed, having the first stop as the Planning Department not the Transfer Office.

Mr. Kruse asked where is the provision of what the procedures are that you follow.

Mr. Gaumer stated that is under J – Exempt Division.

Jerry Teders, Tri County Surveying, asked if the date for a base track would be January 1, 2009 and every parcel that was created before that, as long as it met all requirements we would then be able to split a homestead and 3 parcels out?

Mr. Gaumer stated correct.

Mr. Teders stated if they have an 80 acre parcel and in 2005 there were 8 lots. Then say at different times another lot and another lot. The remaining 30 acres would be a base track.

Mr. Gaumer stated correct.

Mr. Teders stated if someone wanted to subdivide it under the current standard, they would have to go through the Board of Zoning Appeals and the Plan Commission.

Mr. Gaumer stated correct.

Mr. Kruse asked if in the state statute it states notice does not have to be given to adjoining land owners.

Mrs. Mason stated not if you aren't going through the platting process and we will not be going through the platting process.

Mr. Gaumer stated this isn't a subdivision. This would only be for exempt meets and bounds division of land.

Mr. Teders advised it is done like that in Noble, Steuben and LaGrange.

Mr. Kruse asked how they do that.

Mr. Teders stated if a certain tract is transferred with a meets and bounds; it is not a named subdivision.

Mr. Kruse stated then there will be no plats.

Mr. Teders stated in Noble County they call them administrative plats. It is recorded, but it only goes through Plat Committee office and they meet every other week.

Mr. Gaumer stated Plan Commission does not have a plat committee. We have talked about one, but the issue is trying to get enough people to show up at another meeting in the 7:00 p.m. timeframe.

Mr. Kruse asked why we could have one to meet at 3:00 p.m.

Mr. Gaumer stated there is no state statute, because it isn't a subdivision per Indiana code. It's a meets and bounds division of land.

Mr. Deetz stated both Mr. Gaumer and Mrs. Mason have explained why they are doing this and if they have the majority of the Plan Commission agreeing on it, that's fine, but he feels the more we notify the public the better off we are.

Mr. Kruse stated the County Commissioners are going to have to agree with it.

Mr. Deetz stated the need would have to be justified. The other counties go along ways to help with notifications. All 3 County Commissioners like to keep the public advised.

Mr. Gaumer stated even through the Plat Committee in Noble there are no notifications.

Mr. Kruse asked Mr. Teders if Noble has no notifications.

Mr. Teders advised not to his knowledge. For example, in Noble County, we supplied the names of all the neighbors within a certain distance. He did not know if they were notified, but it wasn't something his client had to do.

Mrs. Mason stated regarding the 80 acre and 40 acre split; would we want to notify all the adjacent property owners, because it is an exempt split and you aren't building on it? The majority of the splits that would occur, they would want to be buildable and this is going to stop people from walking into the Transfer Office with any kind of legal description that doesn't meet our lot acreage, doesn't meet our lot width, etc. without our approval. There is going to be more tracking information that will benefit not only employees, title companies, etc., but also benefit potential land purchasers, because when the title company does the research, there is going to be a piece of paper that says whether that is a buildable parcel or not. We receive many calls from people saying they want a permit and we say it isn't buildable, but it has already been split. It didn't go through our process.

Mr. Deetz stated regarding his 80/40 acre split; if somewhere along the line we have a drainage issue or a water issue, everyone involved has the right to be publically notified so they can come here.

Mrs. Mason stated if we add something that states if there is a county regulated drain crossing any of the property they want to split, they are automatically required to notify adjacent property owners.

Mr. Deetz stated that would make him happier.

Mr. Kruse stated on page 5 of the Blue Book, it makes a distinction between transfers of ownership not for development of lots. A division for the purpose of development is regulated by the local subdivision ordinance.

Mr. Gaumer stated correct, it is regulated through exempt divisions.

Mr. Kruse stated he wants to check with Jim McCanna also. There are two issues; political feasibility and legal feasibility.

Mr. Gaumer stated regarding the legal feasibility; if it is illegal, then 80% of the counties in Indiana would be illegal, because they are all doing it. Mr. Gaumer stated he will research this more.

Mr. Kruse stated another clause to balance this out; some local subdivision control ordinances exempt small subdivision or may exempt subdivision that result in large tracts. This practice is waning due to difficulty tracking entitled splits, conflict in agricultural areas, loss of rural character, drainage issue and increased demand for county road improvements.

Mr. Gaumer stated the reason for this is because splits are allowed through the Transfer Office, but the Plan Commission determines if they are buildable or not. What this exemption allows are those minor lots up to 3, being exempt buildable lots.

Mr. Kruse asked if those 20 acres would need to come to anyone.

Mr. Gaumer stated they would still need to come to our office to get that approval form that states they are a 20 acre agricultural exempt division, non-buildable except for agricultural buildings. The form would be like our applications. It isn't part of the UDO; it would be a form that gets recorded with that split.

Mr. Kruse stated the constitutional requirements of due process is giving all interested parties notice of any kind of proceeding.

Mr. Gaumer stated that is currently not being done when they go through the Transfer Office. They are not notifying anyone.

Mr. Kruse asked Mr. Deetz if he could talk to the other commissioners, as there is no use doing this if the commissioners aren't comfortable with it.

Mr. Deetz stated he feels it should be discussed in a public meeting with the Plan Commission and Mr. McCanna.

Mr. Kruse stated if someone comes in for a 3 lot exempt division of land and it isn't going to be called a plat, notice could still be given to the adjoining property owners couldn't it. Will notice be given to the Board of Health and Drainage Board?

Mr. Gaumer stated it would still go through the technical review process.

Mr. Kruse stated he would like see in writing all that is going to be done.

Mr. Gaumer stated that process doesn't change from the current application, except notification to the property owners. The reasoning is due to the administrative tracking side of it. We have 5 subdivisions coming next month, which are 5 different divisions that need to be tracked at different times. Currently they get tracked on a definite date, which is the Plan Commission meeting date and those notifications need to be sent out 10 days prior to that date.

Mr. Kruse asked Mr. Teders if he is sure Noble County doesn't give any notice.

Mr. Teders stated the last subdivision he did in Noble County was 2 lots; a 3 acre lot and a 12 acre lot. He had to provide a list of adjoining owners within 1320 ft. of the property and whether the plan committee at some time notified them or not, he did not know.

Mr. Kruse stated if they required the names of adjoining property owners, it would seem they would notify them.

Mr. Kruse stated it could be exempt and still give notice. What is of concern is if people are not notified at all, then later they say this was approved and the runoff is causing problems.

Mr. Gaumer stated he will check with those municipalities and see what they do.

Mr. Kruse asked Mr. Gaumer to get a copy of the ordinances they are using.

Mr. Kruse stated he does not want any votes but asked how each Board member felt about up to 3 lots divisions not coming to the Plan Commission, but being handled at the office.

Mr. Gaumer advised he asked everyone at the individual meetings where they stood on this and all except the first group were in favor.

Elysia Rodgers stated she is in favor of no notifications unless there are issues that are brought up during the technical review.

Mr. Yoder stated he has always been in favor of at least contacting the surrounding land owners and making them feel they are part of the decision.

Sandy Harrison stated she feels it is okay as long as there is no issue through the technical review.

Mr. Kruse stated they need to have criteria in the event drainage is involved.

Mr. Gaumer stated it will still go through the Drainage Board for approval.

Mrs. Mason stated Mike Kline can tell you everywhere in this county that has drainage issues. If he feels the need with the Commissioners and Drainage Board, he can bring it forward and state he wants land owners notified.

Mr. Gaumer stated if any of the departments in the technical review have an issue, it will be sent to the full Plan Commission.

Mrs. Delbecq stated from an efficiency standpoint going this route does help. She does like the notification piece to be there, but from a staff perspective, it does make for inefficient tracking. The ultimate concern is what happens when one of these cases brings to light something the staff didn't find, or technical review didn't find and the Plan Commission Board wouldn't know about.

Mr. Gaumer stated it will be requested the Commissioners not pass this if we are going to have notifications in exempt divisions because that would put more of a burden to make sure those notifications are done and tracked unless we want to form a plat committee to do exempt divisions.

Frank Pulver stated if we have checks and balances it should be fine. There is always going to be the possibility of that one time, that's unavoidable. He is in favor if helps to streamline and helps efficiency.

Mr. Gaumer stated he is dealing with that one time right now. What the Plan Commission did was put the burden on the surveyor to make sure the drainage is fixed. It isn't anything that the Plan Commission can say they have control over. A condition was added that said the drainage issue lies with the surveyor and you have to fix it through their office.

Mr. Griffin stated he likes the idea of streamlining it.

Mr. Kruse stated he would like to review the process list from Mr. Gaumer, to make sure it is as acceptable as possible.



Mr. Deetz stated we have hired Mr. Gaumer to entrust him to make these decisions. If the Plan Commission and our attorney are for it, I would not lead a charge against it.

Mr. Kruse stated under the old ordinance, agricultural was exempt, so one could build a farm house, barn, etc., however was required they have proper setbacks to make sure it wasn't interfering with a regulated drain, etc.

Mr. Gaumer stated they will still have to go through that.

Mr. Kruse stated what you are proposing isn't dissimilar to what was done then.

Mr. Kruse asked how someone could be stopped from going out and buying 5 acres and doing meets and bounds, dividing and selling it.

Mr. Gaumer stated from the Transfer Office they are going to send them to our office first.

Mrs. Mason stated they aren't going to automatically record it. It's going to get stopped.

Mr. Gaumer advised the County Auditor and County Recorder shall not accept or record such split without an attached exempt subdivision approval form provided by the Zoning Administrator.

Mrs. Mason stated that is one of the reasons we are trying to stop this. There are too many people splitting, selling and saying it is all buildable. Then they come to us and we have to tell them it is not buildable.

Mr. Gaumer stated he would suggest if we want to review this more, we vote to table this to a future meeting.

Mr. Deetz stated I do think it would be beneficial for all of our legal questions to get answered. He has concerns and would like to know how the other counties are doing it.

Motion was made by Frank Pulver and seconded by Elysia Rodgers to table this to a later date. Motion Carried.

#### ETJ and Inter Local Cooperation Agreements – Auburn and Waterloo

Chris Gaumer, Director, stated this doesn't need formal approval from the Plan Commission but a recommendation to the Commissioners would be helpful. This is a municipality approval.

They were vetted through David first and he is the Waterloo attorney, so Waterloo has already approved theirs through the Plan Commission and it will be going to their Town Council.

Auburn's went last Tuesday, so they have already approved as well.

Mr. Kruse stated Waterloo did say they want Mr. Gaumer or the Plan Commission to approve their zoning.

Mr. Gaumer stated correct, so we are the last step for this until it goes to the County Commissioners for vote and then to their respective Town or City Councils.

Mr. Gaumer stated the changes to the Auburn Agreement.

Mrs. Delbecq asked if D on page 3 is cohesive with what Cathy Manual at the Health Department is proposing to do with the septic ordinance.

Mr. Gaumer stated correct.

Mr. Gaumer stated the majority of the changes came on part 5, Extra-Territorial Jurisdiction Area Determination regarding projected growth, rate of projected growth and how that determines what those areas should be.

Mr. Kruse stated if the city passes zoning on some portion of a two mile area, they can zone it and you have to amend your maps to reflect what they zone. However, the state statute says the jurisdiction for subdivision still remains with the county. Part of the issue we had before was the jurisdiction for subdivisions being transferred to the city. You can accomplish the purpose but

you can't transfer jurisdiction, that is a state law. The city should have authority and control of hearing subdivisions.

Mr. Gaumer stated it is giving authority and control to them, while not changing the jurisdiction. The same thing with Hamilton and their ETJ; it is controlled through Steuben County and all of Ashley is controlled through DeKalb County zoning. It is an inter local agreement, it is not considered an extra territorial jurisdiction.

Mr. Gaumer asked Mark Benbow if the Plan Commission said anything about this.

Mark Benbow stated it was very positive conversation. The zoning map was very helpful. It's a huge cleanup and it answered some questions.

Mr. Gaumer stated there are no findings of fact; we just want a motion for a favorable recommendation.

Motion made by Randy Deetz and seconded by Sarah Delbecq for a favorable recommendation of the Auburn ETJ and Interlocal Agreement. Motion Carried.

Mr. Gaumer stated the Waterloo agreement is exactly the same.

Mr. Kruse stated Waterloo wants to make sure that Mr. Gaumer is okay with the means of the zones they propose.

Mr. Gaumer stated he is fine with it.

Mr. Gaumer stated on page 11, exhibit A, Waterloo is going through an annexation. Once the annexation is approved it will be part of their ETJ.

Mr. Gaumer stated it is basically the same except for the maps. Their proposed zoning was reviewed and it seems to mend with what the county is.

Mr. Deetz stated there is a farm off on 31 and 28 that the county had as being open space; did they change to agricultural.

Mr. Gaumer stated it changed to industrial. A letter was sent to the property owner because the solar farms were not looking at this property any longer. The property owner stated he was going to rezone it at the end of this year, which will go through the town of Waterloo.

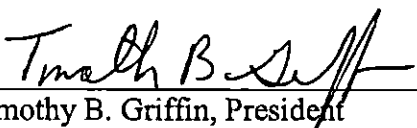
Motion made by Randy Deetz and seconded by Elysia Rodgers for a favorable recommendation of the Waterloo ETJ and Interlocal Agreement. Motion Carried.

#### **REPORTS FROM OFFICERS, COMMITTEES, STAFF OR TOWN CITY LIAISONS:**

Mr. Deetz reported Waterloo met and discussed issues Waterloo was concerned about.

Mr. Gaumer stated he is attending the Nitty Gritty Workshop on July 26 & 27. Information was made available to anyone interested in attending.

There being no further business to come before the Plan Commission, the meeting was adjourned at 9:51 p.m.

  
Timothy B. Griffin, President

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Mike Kline, Vice President