



## **Grant County Area Plan Commission**

### **Minutes**

**November 7<sup>th</sup>, 2022**

**7:15 PM**

#### **1. Call to Order**

**1.1. President Maynard called the meeting to Order at 7:15 PM**

#### **2. Pledge of Allegiance**

#### **3. Roll Call:**

**3.1. Present:** Randy Atkins, Bob Bothwell, Myron Brankle, Chuck Briede, David Broyles, Jerry Caudill, Robert Couse, Frank Hix, Tyson Nuckols (via Webex), Jim Todd, Rex Maynard, and Steve Wright

**3.2. Absent:** Upland Appointee

**3.3. Staff Present:** Ryan Malott, Executive Director; Brenda Harrison, Executive Assistant; Nicole Bailey, Code Enforcement Officer; Aaron Elsworth, Building Inspector; and Kyle Persinger, APC Attorney

#### **4. Approval of Minutes**

**4.1.** President Maynard noted that the Regular Minutes needed to be postponed, he would like to see additional detail added to the minutes. He would like to see members called by Mr. & Mrs., not by first name.

**4.1.1.** President Maynard would like to have the minutes sent to him for approval prior to being sent out to the members.

#### **4.2. Executive Session Minutes**

**4.2.1.** Mr. Briede noted that Executive Session Minutes are supposed to be General and not so specific. He felt the last line was inappropriate.

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**4.2.2. Motion.** Mr. Couse made a motion to accept the Executive Session Minutes, noting Mr. Briede's objections. Dr. Bothwell 2<sup>nd</sup>. Mr. Atkins, Dr. Bothwell, Mr. Brankle, Mr. Briede, Mr. Broyles, Mr. Caudill, Mr. Couse, Mr. Hix, Mr. Nuckols, Mr. Todd, and Mr. Wright voted yes; Motion Passed.

**5. Finding of Fact**

**5.1.** There is none.

**6. Old Business/Public Hearing**

**6.1.** There is none.

**7. New Business/Public Hearing**

**7.1.** Mr. Persinger swore in Mr. Broyles, Mr. Broyles is the "New" Appointee for the Town of Fairmount.

**8. Reports, Resolutions, Communications, and General Discussion**

**8.1. Attorney's Report**

**8.1.1.** There was no Attorney Report

**8.2. Director's Report**

**8.2.1.** Director Malott's Report was e-mailed out, there were no questions.

**9. Other Business**

**9.1.** President Maynard on behalf of the APC honored Mike Burton with a plaque for his time & service with the APC. Mike stated that he has been with Grant County for 20 years and spent 10 years as a member the APC.

**9.1.1.** Dr. Bothwell 2<sup>nd</sup>, he stated that Mr. Burton was one of the strongest & most honorable members that he has had the pleasure of working with. Dr. Bothwell stated that Mr. Burton will be sorely missed and wished him well.

**9.1.2.** Mr. Brankle stated that he just wanted to say Thank You.

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**9.2.** Mr. Atkins noted that we had suspended receiving solar applications. He noted in the Plan Commission "Basics" (Indiana Planning Association), that the APC needed to establish policies and procedures for accepting & processing applications. Mr. Atkins didn't think that the APC had been involved in any of the application process.

**9.2.1.** President Maynard stopped Mr. Atkins and stated that it would be addressed in the December Executive Session.

**9.2.2.** Mr. Atkins stated he was concerned that Director Malott shared the office checklist he has been working on, he believes it appears to be an application.

**9.3.** Mr. Atkins brought up that he heard a statement that 36 landowners have signed up for Solar. He is not sure where that number came from, he believes someone must have some information in regard to who signed up.

**9.3.1.** Director Malott noted that the number came from Commissioner Wright's Panel Discussion, where Mr. Wright asked the Solar Companies how many landowners each company represented, the number all together was 36. The Area Plan Office has no knowledge of who those individuals are.

**9.4.** Mr. Atkins then asked if we were still taking developments for small solar developments, and have we received any applications for small developments.

**9.4.1.** Director Malott noted that we are still receiving residential applications, but not "Minor or Major" Developments.

**9.4.2.** Director Malott then asked to bring up the Six (6) Month Moratorium & the Ordinance cited by Mr. Atkins in October. He noted that it was a misinterpretation of the Ordinance, that 153.075 Zoning Map & Text Amendments deals with "Pending", "Under Active Consideration", or "With Changes to be Considered" amendments and could not be used towards an adopted ordinance.

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**9.4.3.** Mr. Atkins then asked how we could receive an Application, if we don't have an application developed yet. President Maynard agreed that any application would have to be approved by this board.

**9.4.3.1.** Director Malott noted that Residential Solar is governed under the Indiana Residential Code. Mr. Atkins said that he has no problems with residential.

**9.4.4.** Mr. Atkins stated that he was unsure where Director Malott was going with his statement.

**9.4.4.1.** Director Malott again reiterated that it was a misinterpretation of the Ordinance and this section of Ordinance would not affect an adopted ordinance. Director Malott asked Mr. Persinger if he concurred, Mr. Persinger stated that he concurred.

**9.4.4.2.** Mr. Briede stated, it sounds like we technically could not put a moratorium on an adopted ordinance. Mr. Briede suggested that the APC is probably outside of its boundaries.

**9.4.4.3.** President Maynard ask Mr. Persinger if we were outside of our boundaries since we don't have an approved application for solar yet. His understanding is that the APC has to approve the applications after the Director is done with it. The APC has not done that yet.

**9.4.4.4.** Director Malott reiterated, that what he let Mr. Atkins see was a "inter-office checklist" and not an application that he would hand out to the solar companies. He gave an example of Posey County, where he has been reviewing a Solar Development there; the application is about 6" Thick, with the Drainage Plan being 1" thick itself.

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**9.4.4.5.** President Maynard asked again if the ACP was out of order, Mr. Persinger noted that it was the APC's job to enforce the ordinance. With the application process, we have to follow the ordinance but there is an application process in ordinance, you can develop that. Mr. Persinger pointed out that at this point, everything is moot, since there is no solar development applying for application.

**9.4.4.6.** Mr. Couse said based on what Director Malott is saying, can we put a moratorium on solar, the answer is no. We cannot impose a moratorium. Mr. Persinger stated that he would agree with that statement.

**9.4.4.7.** Mr. Atkins again pointed out that we do not have a Solar Application approved for the Solar Companies to apply. Mr. Persinger noted that the APC can always make a motion to develop an application, he again noted that it is moot at this point because there is no one applying. President Maynard asked if a time limit could be set. Mr. Persinger thought that a reasonable time frame would be acceptable.

**9.4.5.** Dr. Bothwell addressed Mr. Persinger about possible litigation from the APC towards the Commissioners, he said that it was his understanding that Mr. Persinger would not participate as he represents both bodies. Mr. Persinger stated that is correct, he has an obvious conflict. Dr. Bothwell noted, then if the APC decides to move forward, they will have to find other representation.

**9.4.6.** Mr. Briede asked Director Malott if has started working on the application process again. Director Malott noted that with the "new" Software coming in, he has set the solar logistics aside for the moment.

**9.4.7.** President Maynard asked the Commission if they wanted to make a correction on the misinterpretation of the ordinance and the moratorium put in place in . . .

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October. His understanding is that the APC cannot put a moratorium on solar but can hold off on taking solar applications till a Solar Application is made.

**9.4.7.1.** Mr. Atkins made a motion to take Mr. Persinger's suggestion to fix what is supposed to be incorrect. He stated that we have to have some time to create & approve an application before we can receive them.

**9.4.7.2.** Director Malott noted, that with the New Software, it is going to be a 12-month process. Solar will eventually be on there, but basic permits & applications are the current focus. He described the process of how current applications are being processed. He noted the Office was shown beginning to end on a commercial permit & contractor registration, the following Wednesday is the office's next workday with Schneider.

**9.4.7.2.1.** Dr. Bothwell noted that before that application is moved forward that the APC would like to approve that application.

**9.4.7.2.2.** Director Malott noted that the APC could be given usernames & roles, so that they could get on and see the progress. He also noted if he can get connected to the Council Chambers TV, he could show what current permits look like. He noted, he cannot just print off a "Roof Permit Application" and show the APC, it is all on the computer.

**9.4.7.2.3.** Director Malott noted that Solar, CAFO, Wind would be way down the line. Basics are where we are currently focused. Dr. Bothwell noted then it is going to be a matter of months before we are ready.

**9.4.7.2.3.1.** Director Malott pointed out that in most cases, the development itself is the application.

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**9.4.8.** Dr. Bothwell redirected and asked Mr. Atkins if he made a motion to rescind the action taken at the October Meeting for the Moratorium based on Mr. Persinger's interpretation that the APC did not have the right to take that action.

**9.4.8.1.** Mr. Atkins stated that he would rescind that action and tag to it that we will create & approve a solar application before any are received.

**9.4.8.2.** **Motion** by Mr. Atkins to rescind the October Action and add that an Application would be created & approved prior to taking any Solar Applications. Dr. Bothwell 2<sup>nd</sup>.

**9.4.8.2.1.** Mr. Atkins, Dr. Bothwell, Mr. Brankle, Mr. Briede, Mr. Broyles, Mr. Caudill, Mr. Couse, Mr. Hix, Mr. Nuckols, and Mr. Todd voted yes. Mr. Wright abstained. Motion Passed.

**9.4.8.2.2.** Director Malott recommended that the APC review the Solar Ordinance and read thru the section for Applications. He noted that the Solar Ordinance defines what is required for Application. Again, he suggested that it be read by members and brought back in December, as he believes that the application is outlined & defined in the Ordinance.

**9.5.** President Maynard thanked the public for the letters that were sent into the Area Plan Office, he will hand out the letter to the members following the meeting.

## **10. Initiation of Litigation**

**10.1.** Dr. Bothwell made a motion to have a disinterested third party (attorney) review the ordinance that has been submitted, Draft #4, to determine whether or not there are substantial, procedural reasons to consider litigation. Dr. Bothwell added that the review by the attorney would be subject to getting finance (appropriations) thru the County to cover that cost.

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**10.1.1.** Dr. Bothwell asked Mr. Persinger for a rough estimate of cost to have an attorney do the review. Mr. Persinger approximated around \$3,000.00.

**10.1.2.** Mr. Brankle asked if outside funds could apply to this. Dr. Bothwell was unsure, his goal is to make sure that if we are going to do this review that there was financial support for it. Mr. Brankle noted he has been approached by some people that would be willing to help fund the review. Dr. Bothwell clarified that this would be for the review and not for the litigation. Mr. Brankle asked again if the APC got this type of funding, would it have to go thru the County Council to approve.

**10.1.2.1.** Mr. Persinger noted that it would still be considered County funds thru the APC (like grant money). He believes that you can get outside funds donated but it must go thru APC funds that were donated to the County. He noted that any outside, private party could do their own evaluation for a lawsuit outside the APC's purview.

**10.1.2.2.** Dr. Bothwell stated that he believes that we should seek the funding thru the County Council to begin with. He stated that if grounds were found and it is determined that the APC wants to move forward, the next step is to litigate and hire an attorney, which could cost up to \$350.00 per hour depending on who is retained. He noted this could be "Big Bucks" should this get extended out. The County Council will determine if they want to support this or not, the possibility of the APC moving forward will depend on financial support.

**10.1.2.3.** Mr. Couse stated that he would be willing to support that motion, given that internal review is also done, noting that "we are clean" in this process as far as any conflicts and things like that. Dr. Bothwell noted that he would add that to his motion. Dr. Bothwell amended his motion.

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**10.1.2.4.** Mr. Briede stated, this may be the route to go but he wonders if we have communicated with the Commissioners on the legality of the ordinance. He wonders if we get this resolved, are we going to find something else. He wants it clear that this is the only "Sticking" point. He would like for us to go to the Commissioners formally for their interpretation on why they feel this is the way to go, before the APC starts spending money. Mr. Briede addressed Mr. Wright about having Kyle or someone versed in the Ordinance explain the process or other jurisdictions that are doing it this way.

**10.1.2.4.1.** Mr. Atkins said that at a past Commissioner's Meeting an individual tried to address the Commissioners thru a point of order, and they were denied.

**10.1.2.4.2.** Director Malott asked to make a comment. Director Malott pointed out the Purdue Snapshot Survey of all Solar Ordinances currently in the state. From the Purdue Snapshot he noted there are 46 Solar Ordinances in the State; 19 Counties allow SES by right in Agricultural, 23 Counties require a Special Exception, and Seven (7) Counties require a rezoning with Five (5) of those Counties doing an Overlay District. The Point that was made, there are Five (5) other Counties in Indiana doing solar the way it was adopted in Grant County.

**10.1.2.4.3.** President Maynard stated that he still wants to know if Grant County was right or wrong. He doesn't want us to get sued in a couple years because the ordinance is wrong.

**10.1.2.4.4.** Dr. Bothwell noted he wanted to add to Mr. Maynard's Comments before there is a 2<sup>nd</sup> to the motion. He stated this is a "middle of the road" approach. He noted that he understands that this doesn't

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make anybody happy, he knows that there are people in the audience that hoped the APC would take action to litigate tonight. He noted there are people within the APC that question whether we need proceed at all. He stated, one (1), again it gives us the opportunity to see if we (APC) is clean and two (2) to see if there is substantial grounds for the APC to consider moving forward. Dr. Bothwell stated that he cannot see a better way to move forward.

**10.1.2.4.5.** Mr. Couse stated that he would second the motion.

**10.1.2.4.5.1. Motion.** Mr. Atkins, Dr. Bothwell, Mr. Brankle, Mr.

Broyles, Mr. Caudill, Mr. Couse, Mr. Hix, Mr. Nuckols, and Mr. Todd voted yes. Mr. Briede voted no. Mr. Wright abstained (conflict).

Motion Passes.

## **11. Next Meeting is December 5<sup>th</sup>, 2022**

**11.1.** Director Malott noted to the APC that he believed it was too late to get on the County Council's Agenda for appropriations for November, but he would try to get on the agenda for the December Meeting. This is for the request for funds in hiring a 3<sup>rd</sup> Party Attorney.

## **12. Public Input**

**12.1.** Mr. Brankle asked why the Rules of Procedures information on Conflict of Interest were included in the packets. President Maynard said that he had spoken to Director Malott about it, and that thru discussion Director Malott thought they should be added.

**12.1.1.** Director Malott explained that President Maynard & he had a conversation in October on some things that President Maynard was going to address in the Executive Session. Director Malott's understanding was that he was supposed to be

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in attendance for a portion of the Executive Session. Director Malott noted that he was not in the Executive Session but did add it to this month's packet because it was to be discussed.

**12.1.2.** President Maynard clarified he would bring it up in the next Executive Session.

He re-iterated that the Executive Sessions are private and that the members should not go out and talk or run up to the Area Plan Office.

**12.2.** Ted Otis. Mr. Otis wanted to thank the board.

**12.3.** President Maynard handed out the letters/emails that were sent to the Area Plan Office.

### **13. Adjournment**

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Rex Maynard, President

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