

November 16, 2023
Regular Meeting of the
Marshall County Plan Commission
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, David Hostetler, called the Marshall County Plan Commission meeting to order at 7:30 p.m. on Thursday, November 16, 2023, in Room 203 of the Marshall County Building. Present were Commission Members David Hostetler, Terri Barnhart, Craig Cultice, Deborah Johnson, Matt Miller, Kevin Overmyer, Brianna Slonaker, Christopher Kline, and Michelle Mieras. Plan Director Ty Adley, and Lori Lowry Administrative Assistant were present along with interested parties.

Minutes of the September 28, 2023, meeting was presented. Mr. Kline moved, and Mr. Cultice seconded the motion to approve the minutes as submitted. The motion passed by acclamation.

Mr. Miller made a motion to adjust the agenda and hear case 23-PC-19 Matt Lowry first before the board hears the solar amendment case, seconded by Mr. Overmyer. Motion carried by acclamation.

The first item of business was 23-PC-19 LOWRY, Matt - A request for a 2 Lot Minor Subdivision located at the property identified as 9071 N Shore Drive, Bremen, IN 46506, Zoned L-1. Mr. Matt Lowry of 9071 N. Shore Dr. Bremen and Mr. Bernie Feeney 1405 N. Michigan St were present to represent their request.

Ms. Mieras requested to recuse herself from the board for this case.

The applicant is seeking to subdivide parcel 504201000031000009 commonly known as 9071 N Shore Drive. The property is approximately 0.87 acres or 37,897 sqft. The proposal is to split it into two parcels with road and lake frontage. The parcel exceeds the L-1 Lake Residential District minimum lot size of 6,000 sqft. and has received a variance for associated setbacks around an existing garage. A request for a Variance of Developmental Standard 23-BZA-27 on the proposed existing residence parcel to 5' on the west side yard setback from the required 10'/10%, 5' rear yard setback from the required 20' and DENIED the proposed building lot with a 20' front yard setback from the required 30' was approved on a vote of 3-2. Due to the large scale of the parcel and the received variance, the proposal has met all the associated development standards for a subdivision.

Due to the unique nature of this property the house is located in the extreme northeast corner of the property near the road. Based on the layout and how everything is positioned it's feasible for the Lowry's to subdivide this property in order to build a new home.

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There was talk about trying to keep the existing garage and make that part of the parcel with the house. Because of not being able to meet the setback requirements the decision was made that the existing garage will be removed once the new house is built.

Mr. Overmyer made a motion to open for public hearing, seconded by Mr. Cultice. Motion carried by acclamation.

1. Michael Nate – 9087 N. Shore Dr. Bremen Is the adjacent neighbor to the west. The biggest problem he has with the proposal is that he will lose his view of the lake. If the garage is removed why not build the house east and west instead of lengthwise. Building the house in an east/west direction would not diminish their view of the lake.

Mr. Overmyer moved to close the public hearing, seconded by Mr. Cultice. Motion carried by acclamation.

The width of both parcels is 50' each.

Mr. Cultice made a motion to approve 23-PC-19 LOWRY, Matt - A request for a 2 Lot Minor Subdivision located at the property identified as 9071 N Shore Drive, Bremen, IN 46506, Zoned L-1, seconded by Mrs. Barnhart. Motion carried 8-0.

The second item of business was 23-PC-18 Marshall County Plan Commission – Amend Solar Ordinance Article 6, Section 210.

The proposal includes amendments to the existing standards that regulate Farm-Scale Solar Energy Systems which are described commonly as those that are greater than 10 acres in panel area. Upon review of the existing County Zoning Ordinance, Indiana Code and Zoning Ordinances for St. Joe, Kosciusko, Starke, Shelby, Lake, Clinton, LaPorte, Pike, Whitley and Howard Counties. The development standards within the existing ordinance that were furthest reviewed include; road setback, property line setback, non-participating residence setback, buffer, private drainage tile, decommissioning agreement, restoration and reclamation, bonds and financial assurance as well as items that were addressed in other ordinances that could be beneficially added the existing County regulations. Other ordinances included glare, signal interference, sound level limitations, force majeure, emergency response planning, laydown and staging area, and parking. Through the TRC (by one or more members) in review of the above districts, have come to the conclusion to adjust the following standards (as referenced below but are better shown within the track changes document); - Increase the setbacks from 250' to 400' for nonparticipating and to make the same measurement from property line, not by nearest corner of the residential structure. - To require the project to adhere to interior property line setbacks. - To add include where the Board of Zoning Appeals may require buffer. - Buffering shall not only be limited to trimming, removal and replanting and now is clarified for the life of the project. - Buffering may be waived by agreement between the developer and nonparticipating landowner. - The Drainage Plan must include any required temporary facilities needed during the construction of the facility as to not have a negative impact on public infrastructure. - Clarified that the Developer is the party that must repair or install new private drainage tile for overall drainage integrity. - It is now included that all repairs must be completed with a reasonable period of time and to original or better condition. - The developer may not have cabling and other components above ground keeping with best practices rather than being required to having everything buried underground. - Added The developer and/or

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operator must design and install the system to minimize glare on adjacent properties and roadways and not interfere with vehicular traffic, including air traffic. - Added The developer and/or operator must design and install the system to minimize impacts to; television signals, microwave signals, agricultural global positioning systems, military defense radar, radio reception, and weather and doppler radar. - Added The developer and/or operator must account for sound level unless otherwise allowed under 36-7-4-1109, as amended. The developer must provide information pertaining and showcasing the sound attributed by the solar energy system and all associated components will not exceed an hourly average sound level of fifty (50) A-weighted decibels, as modeled at the property line of an adjacent nonparticipating property. This requirement may be waived by the written consent of the owner of each adjacent nonparticipating property. - Added The laydown and staging area(s) shall be setback a minimum of 500' from a nonparticipating residence and any and all lights for the laydown and staging area(s) shall be shielded from shining across residential property. - Added Construction Parking will not be permitted along public roadways. - Added Water and Soil Testing locations shall be submitted and approved by the Board of Zoning Appeals to have results submitted to the Marshall County Commissioners. Testing by a qualified third party is to ensure that there are not any adverse impacts to soil and public water resources. - Added An approved Emergency Response Plan by the primary fire agency along with proof of notice to all mutual aid agencies shall be submitted. - Amended subgrade components shall be removed in their entirety unless agreed to under section iii instead of from a depth of 3' and shallower. - Added Should a Force Majeure event such as; fire, flood, tornado or other natural disasters or acts of God, war, civil strife, a terrorist attack, or other similar acts of violence, other unforeseen events or events over which a project owner has not control, results in the solar energy system not generating electricity, the owner/operator shall as soon as practicable after the Force Majeure event, provide notice to the permit authority of the event and of the resulting cessation of generating operations. Also must demonstrate to the permit authority that the commercial solar energy system will be substantially operation and generating electricity not later than twelve (12) months after the occurrence of the force majeure event. If the commercial solar energy system does not become substantially operational and resume generating electricity within 12 months, the project will be considered abandoned and the decommissioning plan will take effect. The changes within the solar ordinance are intended to keep Marshall County up to date with the ever evolving landscape of solar generation.

Recommendation: Based on the information provided and review by the Technical Review Committee, TRC recommends approval of amendments to section 210 Solar Energy Systems * Setback may be waived or reduced by agreement between non-participating landowner and developers.

Mr. Adley explained to the board their options for recommendation to the County Commissioners.

Mr. Kline made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Ed Allen 15315 Thorn Rd. Believes an ideal solution would be to deny any farm scale solar installations in Marshall County at this time. Submitted a letter along with suggestions and passed out to the board.
2. Ethan Sternberg One S. Whacker Chicago Is against the opposed amendments and in agreement with Mr. Allen to table and go back to the TRC to create a proper consensus as to what the recommended setbacks should be. Passed out

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- information on the Tamarack solar project. Invenenergy started to develop the project back in 2019 and they came to Marshall County because they saw an opportunity. The transmission lines are what brought them to this area. A high level the project is 150 mega watts which is enough energy to power over 30,000 homes. This project will be bringing in income, constructions jobs in the community and economic activity. Take a close look at those setbacks as he believes the proposed setbacks are out of line with what the state code requires and what surrounding communities are doing.
3. Jason Kuchmay, Atty 4211 Clubview Dr. Ft Wayne Talking on behalf of group Concerned property owners of Marshall County. If there is a concern over landowners who are in contract already, it's not a legitimate concern the county is free to amend their ordinance. The county needs to follow the proper procedure of a notice for the hearing to include a summary of the proposed changes in the paper. His clients would like to see a moratorium imposed on solar while amendments are considered. Wants to see the county has the proper protections in place. Reminds the board to look at the comprehensive plan for the "blueprints" of the future development of Marshall County. They would like to see a property value guarantee on non-participating properties, exclude prime agricultural farmland from being subjected to projects or possible caps. Make sure that the county is protected when the decommissioning takes place.
 4. Stan Klotz 1322 W. Grant St. Bremen Questioning three things that haven't been brought up. 1. Will there be killing of microbes in the soil? 2. Dekalb County – Commissioner's rejected an overlay zone that allows solar to come into their county. Spencer County – Mechanics liens were filed against the property owners with contracts because a company that was hired to put in the infrastructure wasn't paid.
 5. Rachael Connor 9780 S. 150 W. Pennelton Exec Director of Hoosiers for Renewables. Passed a packet to the board. Their job is to advocate for the advancement of wind, solar and other forms of renewable energy. Is asking that the board send the request back to the Technical Review Committee for the setbacks. Their only issue seems to be the setback proposals that were added. Would be interested in providing material to this committee before the meeting.
 6. Debbie Vandemark 14750 Tulip Rd. Culver Addressed her timeline of solar concerns. Has concerns that the comprehensive plan is not being followed. The setbacks are not far enough to protect property values. Fines and consequences are not in the ordinance if it is not followed. Decommissioning concerns.
 7. Joanna Null 8099 S. 200 E. Columbia City From Whitley County. Addressed the 1,500' setback from non-participating property confusion. This was put in place because there were four property owners who signed up to put up solar panels and 80 surrounding properties that were impacted. This was put in place to help protect nonparticipating property values. Requesting the board protect the non-participants at their property line not at the foundation of their home.
 8. Steve Gorski 805 Baker St. Doesn't think there's enough in the proposed ordinance. Thinks there should be a moratorium on large scale solar energy and utility scale battery energy storage systems so standards could be addressed. Would also like to see addressed penalties for non-compliance.
 9. Ed & Kim Reiter 348 Columbia Circle Valpo Their property is at 14218 Tulip Rd. Before signing their lease they did a lot of background research for almost a year. Solar has been around for years and doesn't see any environmental or safety issues concerning this. Believes the setback proposed severely limits landowners to make an

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- income. Kim – They have researched ahead of time and even throughout the contract with Invenergy. The research that was done wasn't just for themselves, but for their community.
10. Katie Lewallen 1075 East Shore Dr. Culver Recommendations: Pg 4 (w)
Instead of minimize it should be eliminate. Instead of the average sound she recommends 40 dba and install converters in the center of the facility to minimize noise nuisance. Played the sound of the inverters.
 11. Mark Owens 9698 16th Rd. Argos Is in favor of solar farms. Has a concern with people from out of town having any impact on what is happening in Marshall County.
 12. Tim McCarthy 20087 SR 10 Culver Is a farmer and is in favor of this project. Has ground that is not prime farm ground and is contracting to be a part of the solar farm. We've already had a moratorium and doesn't see the need for another one. The original setbacks are average and should have been kept.
 13. Trina Radabush 601 S. Meridian St. Indy Works for GeeNex and has 15 contracts. Believes the ordinance that is currently in place is reflective of the additional changes that the TRC committee except for the setbacks do create a workable standard that provides reasonable protection for all of the county's residents as well as protects the property rights that choose to be part of the project. Believes the proposed 400' setback is excessive. Give developers the opportunity to bring their projects forward and be evaluated on their own unique merits.
 14. Greg Hildebrand 17996 14th Rd. Plymouth Marshall County EDC -The economic impact for this project will be beneficial for everybody in the county. This year alone Marshall County has increased their businesses by 150 million. This solar project alone is said to be a 275-million-dollar project. The economic impacts the tax rates – the real estate alone is a 10 million dollar plus because the land changes from ag to solar. Believes the increase in setbacks is counterproductive. The original setbacks were average and right in line with counties around us.
 15. Benjamin Callendar 19668 15th Rd. Culver Is all for solar, but wouldn't necessarily put it on farmground.
 16. Wayne Neidlinger 16323 Redwood Rd Culver Believes in rights to the farms freedoms. Now you are putting restrictions on how much setback there has to be. Why doesn't the farmer have the rights to do with his land what he wants? There are a lot of housing projects that are taking up farm ground. The farmers should have some freedom.
 17. Paul Levett 16161 18th Rd Culver Is not anti-solar but wants to respect property rights. Property owners have a right not to have a loss of property values depending on the setbacks. After reviewing articles/studies believes that a setback of 500' is sufficient. Looks at Marshall County as a diamond.
 18. Josh Frances 7995 N. SR 19 Denver Was a County Commissioner in Miami County for 8 years. Has fought hard for property rights in his own county. Believes that requiring a 400' setback from the property line hurts property values. This is government over reach.
 19. Kristina Wheeler Bosse McKinney Evans, Indy Spent the last 25 years solely practicing energy law and public utility law. Marshall County's existing solar ordinance is one of the best she's seen. It is workable and fair. It balances a lot of competing interests. Every solar farm scale is highly regulated by the Indiana Regulatory

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Commission and by the Federal Energy Regulatory Commission. All disputes go to these commissions. It's not the job of this board to protect the individual property values of anybody.

20. Will Patterson 1730 Dogwood Rd. Bremen Is an elected official in Marshall County. His philosophy is to predict and prevent vs. react and repair. Believes we are here to represent the people.

21. Mike Umbaugh 19700 12th Rd. Sent a letter in support. Currently has 162 acres in Union Township and after long consideration and knowing his ground ranks as average or below quality decided to be in a contract with a solar company. He would hate to see a project that will have such an overwhelmingly positive impact on this community as a whole derailed because of resistance to change by some well-intentioned individuals.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Cultice. Motion carried by acclamation.

The Technical Review Committee meetings are scheduled for every 1st and 3rd Thursday of the month at 9:00 am in room 300.

The noise portion of the ordinance was brought up and questioned the validity since Marshall County doesn't have a noise ordinance in place. Mr. Adley explained that portion of the ordinance came from Indiana Code and was amended. The audible level that was suggested within that ordinance was supposed to come from the foundation and we increased it to the property line.

Mr. Miller believes the proposed ordinance is pretty close to where it needs to be. He brought up for discussion a yearly cap and a total cap.

During discussion it was brought up that Marshall County has 220,000 acres of farm ground. While talking about caps it was said that Delaware County did a 20% cap which was about 46,000 acres. Ms. Slonaker stated that a cap would fall in line with Marshall County's Comprehensive Plan to protect ag land. Our area is a very unique location within the US where we can have muck and sand within a hundred feet from each other.

The consensus of the board seemed to be that the ordinance was close. The issue of setback seemed to be a concern on both sides. If this went back to the Technical Review Committee the following items would benefit additional discussion: setbacks, farm ground percentage, and confirm noise.

Ms. Johnson made a motion to create a proposal of a one-year moratorium for the installation of commercial solar farms, seconded by Mr. Miller. Motion denied with four yes and five no votes.

Mr. Kline made a motion to table 23-PC-18 Marshall County Plan Commission – Amend Solar Ordinance Article 6, Section 210 and send back to the Technical Review Committee to address: setbacks, noise, farm ground cap, and bond values, seconded by Ms. Mieras. Motion carried 9-0.

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2024 Plan Commission Meeting Calendar

Both the Planning Commission and Board of Zoning Appeals have discussed moving up the time of their meetings and the desire to keep the meeting times the same.

Ms. Johnson made a motion to approve the Planning Commission meeting calendar with the amendment to change the meeting time from 7:30 to 7:00pm, seconded by Mr. Overmyer. Motion carried with a voice vote 9-0.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted.

Craig Cultice,
Secretary