

May 23, 2024
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 7:00 p.m. on Thursday, May 23, 2024, in Room 203 of the Marshall County Building. Present were Commission Members David Hostetler, Matt Miller, Brienne Slonaker, Chris Kline, Mike Burroughs, Terri Barnhart, and Deborah Johnson. Plan Director Ty Adley, Lori Lowry Administrative Assistant, Fred Webster the City of Plymouth Liaison and Derek Jones, Marshall County Plan Commission attorney was present along with interested parties. Members absent were Craig Cultice and Michelle Mieras.

Mrs. Johnson made a motion to approve the January 25, 2024, executive session minutes with the exception of adding the public access counselor's opinion, seconded by Mr. Miller. Motion carried with a voice vote 6-0-1 with Mr. Burroughs abstaining.

Ms. Slonaker made a motion to approve the February 22, 2024, Planning Commission meeting minutes, seconded by Mrs. Barnhart. Motion carried 5-0-2 with Mr. Kline and Mr. Burroughs abstaining.

Ms. Slonaker made a motion to table the April 25, 2024 Planning Commission meeting minutes due to not having quorum for that meeting, seconded by Mr. Hostetler. Motion carried by acclamation.

The first item of business was 24-PC-08 RIPPY, Adam - A request by James Rippy for Rippy Minor (Two Lot) Subdivision; located at: 4860 Underwood Rd., Walkerton, IN Polk Twp., Zoned A-3.

The applicants were not present. **Mr. Miller made a motion to table the above request to the end of the meeting, seconded by Mrs. Johnson. Motion carried by acclamation.**

The second item of business was 24-PC-09 BACHTEL, Kenneth & Michelle - A request for a Zoning Change from C-2 to A-1 (Agriculture); located at: 10647 Hawthorn Rd., Plymouth, IN Center Twp., Zoned C-2. Ken and Michelle Bachtel of 10313 Hawthorn Rd., Plymouth appeared before the board to present their request. Mr. Adley presented the findings of fact.

The applicant is seeking to rezone their property because they do not have commercial intentions with the property. Per the applicant the parcel was originally zoned A-1 Agricultural Zoning District and they would like to rezone it back from the current C-2 Highway Commercial District. The

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Comprehensive Plan does designate the intersection of Hawthorn and US 30 as Corridor Commercial, but currently the future of access between US 30 and the crossroads is under review by INDOT their Propel study. The rezoning of the property from Commercial to Agricultural would be considered a downzoning from a more intense district to a lesser intense district.

RECOMMENDATION: Based on the information provided and review by the Technical Review Committee, Staff and TRC recommend approval of the proposed rezoning from C-2 to A-1.

The applicants would ultimately like to have a residence on the property which would require a zoning other than commercial.

Mrs. Barnhart made a motion to open for public hearing, seconded by Mrs. Johnson. Motion carried by acclamation. There being nobody to speak for or against Mrs. Barnhart moved and Ms. Slonaker seconded the motion to close the public hearing. Motion carried by acclamation.

Mrs. Barnhart made a motion to approve 24-PC-09 BACHTEL, Kenneth & Michelle - A request for a Zoning Change from C-2 to A-1 (Agriculture); located at: 10647 Hawthorn Rd., Plymouth, IN Center Twp., Zoned C-2, and forward to the Marshall County Commissioners with the favorable recommendation, seconded by Ms. Slonaker. Motion carried with a voice vote 7-0.

The third item of business was 24-PC-05 Marshall County Plan Commission - An ordinance amending article 3, 6, and 13 to create a regulation for battery energy storage systems.

Currently within the Marshall County Zoning Ordinance there are little to no requirements for Battery Energy Storage Systems. The Plan Commission has advised the County Commissioners and there is currently a Moratorium in place prohibiting the application of Battery Energy Storage systems that is set to expire on October 16th, 2024. The Moratorium is set so that the Plan Commission can consider and determine appropriate building, zoning and use regulations which should be adopted and incorporated into the Marshall County Zoning Ordinance as the same pertain to Utility Scale Battery Energy Storage Systems. Battery Energy Storage Systems are the latest in a line of ordinances that the public has taken great interest in. The County ordinance currently only has an online reference under the existing solar ordinance as of early February 2024, but as battery technology has advanced and become a more viable stand-alone land use an ordinance is in need of being created should a project apply in Marshall County's zoning jurisdiction. The State of Indiana has adopted a process, procedure, and series of requirements that are to be adhered to for Battery Energy Storage Systems effective July 2023. Those requirements were reviewed along with the reference document NFPA 855 which set the standard for Battery Energy Storage Systems. The following proposal is based on the research of Indiana Code 22-14-8 (HEA 1173) "Utility Scale Battery Energy Storage Systems", National Fire Protection Association (NFPA) 855 "Standard for the Installation of Stationary Energy Storage Systems", articles by National Renew Energy Laboratory, UL Solutions (previously Underwriters Laboratories), Pacific Northwest National Laboratory, American Clean Power, along with multiple communities with existing battery storage ordinances outside of the state of Indiana due to the recent interest in the state of Indiana for such projects and the lack of ordinances dedicated to

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regulating them. One amendment per discussions with the local fire department has been included and can be best shown in the tract changes document. As better detailed in the PowerPoint presentation for the research from IC 22-14-8, Various Sources and Communities; Grid-Scale Battery Storage FAQ, UL 9540, Siting and Safety Best Practices for Battery Energy Storage Systems, Energy Storage in Local Zoning Ordinances, An Overview of Local Zoning Ordinances for Battery Energy Storage Systems, Community Codes, and NFPA 855 below is some basic information from analysis prior to writing the ordinance. Indiana Code now requires that the Department of Homeland Security regulate and approve all BESS projects beginning July 1, 2023, and shall be compliant with NFPA 855. It permits BESS projects within ½ mile of a floodplain so long as the structure is raised 2 feet above the floodplain (commonly known as flood protection grade). The operator shall provide copy of the emergency response plan and provide annual training for the fire department on their specific operation. Per the article “Siting and Safety Best Practices for Battery Energy Storage Systems” by Exeter Associates, there are three items that should be updated in current regulations of battery facilities, and they fall into three categories; siting, safety and decommissioning. They were more detailed as: “The siting plan should address undergrounding on site utility lines; maintaining the site free of vegetation; following noise, height, and setback requirements; fencing or enclosing the site; and installing screening or other measures to minimize visibility impacts. The safety plan should include: hazard detection systems; means of protecting incipient fires; and ventilation and/or cooling strategies for protecting against thermal runaway, fires, and explosions. As a corollary, sound training must be provided to local responders so that they are equipped to handle any of these potential emergencies – which require substantially different tactics – as safely as possible. BESS should have plans to address extreme weather, earthquakes, or other environmental threats that may occur. The decommissioning plan should include: descriptions of the steps that will be taken, a cost estimate, a funding plan, and a contingency plan for handling damaged batteries.” The 4 communities that were reviewed in 3 states had the following standards of interest; Tier’s of Battery Storage, Reference to State Building Code and NFPA 855, Road Access, Clearance space Lighting for safety and security shall be shielded, 30’ clear space of vegetation in accordance with 855, Setbacks, Buffer, Fencing, Noise, Decommissioning Plan and Bond, SDS(safety data sheets), Emergency Operations Plan, Statement of Purpose, Applicability, General Requirements, and Utility lines. NFPA 855 is comprised of 15 chapters and 8 annex’s that have been around and amended every 3 years since the mid/late 1990’s. It covers topics including but not limited to; Definitions, Hazard Mitigation Analysis, System Interconnections, Commissioning, Operation and Maintenance, Firefighting Considerations, Decommissioning, and has a specific annex titled “Guide for Suppression and Safety of Lithium-Ion Battery Energy Storage Systems” which is beneficial because Lithium-Ion is the leading and most used technology when it comes to energy storage systems. The annex indicates that; “As an important first step in protecting public and first responder safety while promoting safe energy storage, the technical committee has developed this annex as a comprehensive set of guidelines for reviewing and evaluating LIB ESS facilities.” As well as “This annex provides details about the design, hazard evaluation, installation, operations, appropriate technology application, inspection, and first responder safety processes of LIB-based ESS.” The annex even goes on towards the end to indicate that through explosion modeling has shown that the minimum distance should be 75’. It is recommended to increase that to a minimum clearance of 100’.

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Then that a Recommend evacuating buildings withing a 200' diameter of the battery energy storage system (BESS). There is potential for damage to glass in windows and structure depending on distance from the site. Each hazard will be different based on the state of charge at the time of the event. The Technical Review Committee met on Thursday February 1st and outside of its recommendation discussed later, indicated that some additional research would be beneficial on Electromagnetic Fields and Sound Frequency. Below is a brief synopsis for the analysis, but additional information is provided within the PowerPoint presentation. Included within the EMF and Sound frequency research were articles from the National Cancer Institute and National Institute of Environmental Health Sciences. NCI indicates that "electric and magnetic fields are invisible areas of energy (also called radiation) that are produced by electricity, which is the movement of electrons, or current, through a wire." Electric and magnetic fields are referred to as EMF and there are two categories; high frequency (ionizing) and low to mid frequency (non-ionizing). High Frequency is a greater frequency than visible light beginning at approximately 10 to the 15th power of hertz (measurability of frequency). Low frequency is less than the visibility light spectrum from 0 to approximately 10 to the 15th power of hertz. As a point of reference power frequency is 50-60 hertz. A cell phone operates at approximately 1000 hertz or 10 to the 3rd power (per the NIEHS study). Per the NIEHS study, one of the topics included links of EMF to childhood leukemia, but "the association is weak and it is not clear whether it represents a cause-and-effect relationship." The study further goes on to discuss relationships between EMF and heart rate, sleep electrophysiology, melatonin, and several more topics. These items have been researched post the recommendation of the proposal, should the Plan Commission identify a need for change in the ordinance as proposed, it can be reverted back to staff and/or the Technical Review Committee for additional consideration.

Topics of research discussed were:

- Bonds are Regularly Utilized in the Renewable Energy Space
 - Performance/Payment Bond
 - Right of Way Bonds
 - Custom Bonds
 - Operations and/or Maintenance Bonds
 - Decommissioning or Restoration Bonds
- Surety Bond Providers Can Assist with Contractor Prequalification
- Surety Providers can Help Resolve Claims Effectively
- Ground/Spill Protection
- Noise and setbacks/Comparisons
- Thermal Runaway

The following battery energy storage system proposal was presented.

- Article 3
 - Uses and Districts
- Article 6
 - Intent
 - Public Purpose

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- Types of Battery Energy Storage Systems
- Personal Battery Energy Storage System Standards
- Utility Battery Energy Storage System Standards
 - Setbacks
 - Buffer
 - Fencing
 - Power and Communication Lines
 - Deforestation
 - Topsoil Preservation
 - Signage
 - Lighting
 - Noise
 - Stray Voltage
 - Force Majeure
 - Access Roads
 - Batteries
 - TRC Review
- Permitting
 - Site Plan
 - State Permit
 - Battery Type
 - SDS
 - Emergency Response Plan
 - Hazard Mitigation Analysis
 - Property Operations and Maintenance Plan
 - Environmental Report
 - Traffic Management Plan
 - Commissioning Plan
 - Decommissioning Plan
 - Restoration and Reclamation Plan
- Site Plan
- Decommissioning Plan
- Bonding
- Article 13
 - Definitions

Recommendation:

Based on the information provided to the Technical Review Committee there was a majority recommendation to approve the proposal with the inclusion of the fire departments access amendments, but there were some areas of interest including; the term third party and who had rights to select whom the third party would be, corresponding with the local Emergency Management Director, setbacks being too small, the effects of EMG and sound frequency.

Per meeting with Plan Commission Attorney, there are a few sections that can benefit from additional clarity, but the suggested amendments were not included as the meeting was after the ordinance was initially proposed.

Initial proposed was tabled February of 2024 for additional information, which was presented in April.

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The proposal was then tabled in April to take the additional information and public comment under advisement.

Staff would recommend that the plan Commission intake the public comments and the information provided this evening and table the proposed ordinance to again digest the information and collectively come together in the next Plan Commission meeting.

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

1. Casey Neidlinger 16682 14 B Rd Asked if there has been any discussion on vetting the companies or a financial analysis on these companies. Would like to see a committee formed.
2. Deb Vandemark 14750 Tulip Rd Passed out a page from Tenaska's website showing a picture of a battery energy storage system. Asked if this looks like an agricultural or commercial site. Has heard that promises are being made that are misleading. Request the board review all the wording of the proposed ordinance. Would like the agenda to read if there is going to be a public hearing.
3. Katie Lewallen 1085 E. Shore Dr. Had a conversation with Mrs. Johnson and Mr. Abbott a retired fire chief from Arizona. Mr. Abbott was present at the BESS fire in Arizona. Discussed NFPA855 and that they are the lowest set of standards as well as the IAF curriculum.
4. Connie Nininger 3129 N. 400 E. Monticello Works for National Center for Infrastructure and Development. Shared battery energy safety information and data.
5. James Hingston Longbeach CA Lead developer from Tenasca. Looking to address the needs for utilities. Tenasca recommends the board move forward and make a recommendation tonight. They would like the setback reduced to 200' from residences and property lines to 50', eliminate setbacks from non-residential structures, and flexibility to waive setbacks through agreements with non-participating land owners. Keep bonding to every three years and done by a third-party auditor.
6. Brandon Schadek 19921 9th Rd. Asked the board listen to people from Marshall County.
7. Brian Johnson 20707 9th Rd. Brought back up the open-door concern.
8. Julie Spitznagle 5119 Sage Rd. Asked if data centers are part of battery storage? Why aren't we looking into the best standards and not the minimum standards? Recommended to rescind the letter of the Sol Smart Initiative from Macog.
9. Greg Hildebrand MCEDC This project has little cost to our roads and not a big demand for labor.
10. Michelle Jensen 9916 Pine Rd. Whether it's a privately owned or not, it affects all of the people in Marshall County. Against the project.
11. Curt Jensen 9916 Pine Rd. Discussed the danger of lithium-ion batteries. What is the cost of fire protection from the county?
12. Robert Demis 20969 Union Rd. Shipping containers come with a wooden floor. Has this been discussed?
13. Julie Spitznagle 5119 Sage Rd. Wanted clarification that data centers wouldn't be up for vote under 24-PC-05.

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Ms. Slonaker made a motion to close the public hearing, seconded by Mrs. Barnhart. Motion carried by acclamation.

Mrs. Johnson was part of the conversation with Mr. Abbott and Katie Lewallen. Mr. Lewallen commented that he is willing to meet with the group if so desired. Mrs. Johnson's desire is to put together a sub-committee as discussed at the previous meeting. **Mrs. Johnson made a motion to create a sub-committee, motion died for a lack of a second.**

After a lengthy discussion on the moratorium **Mrs. Johnson made a motion to write a proposal to extend the current moratorium on battery storage until October 16th, 2025, seconded by Mr. Miller. Motion did NOT pass on a voice vote 4-3.**

Mr. Kline made a motion to approve 24-PC-05 Marshall County Plan Commission - An ordinance amending article 3, 6, and 13 to create a regulation for battery energy storage systems, motion died for a lack of a second.

The board discussed the desire to hear from Mr. Abbott on the differences between NFPA 855 and the IAF. After several options were put on the table Ms. Slonaker made a motion to table **24-PC-05 Marshall County Plan Commission - An ordinance amending article 3, 6, and 13 to create a regulation for battery energy storage systems to find out the particulars in how a meeting could be set up to talk to Mr. Abbott in a public setting; Ms. Slonaker amended said motion to add discussing and comparing NFPA 855 and IAF, seconded by Mr. Burroughs. Motion carried with a voice vote 7-0.**

Ms. Slonaker made a motion to schedule a special meeting for questions & answers related to NFPA 855 and IAF with Mr. Abbott, seconded by Mrs. Johnson. Motion carried with a voice vote 7-0.

Mrs. Johnson stated in the proposed ordinance it reads "NFPA 855 requirements". She told the plan director she would like to have the requirements listed. Also, thinks it would be a good idea to have it listed later in the ordinance.

Mrs. Barnhart has a concern about listing out word for word NFPA 855 requirements in the ordinance. Should NFPA change at some point, then what?

There was additional discussion on posting a link in the proposed ordinance to assist people in directing them to NFPA 855.

The first item of business was 24-PC-08 RIPPY, Adam - A request by James Rippy for Rippy Minor (Two Lot) Subdivision; located at: 4860 Underwood Rd., Walkerton, IN Polk Twsp., Zoned A-3. James and Sara Rippy of 4810 Underwood Rd. were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to subdivide a parcel that is 3.60 acres into two lots for a family member.

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The applicant has received approvals for a rezoning and variance previously and this is the last step before coordinating with the local high school whose trade class will be building a new home on the property. The property currently has a residence and a couple of accessory structures on the property and will all meet the required setbacks.

RECOMMENDATION Based on the information provided and review by the Technical Review Committee, Staff and TRC recommend approval of the proposal.

Mrs. Barnhart made a motion to open for public hearing, seconded by Ms. Slonaker. Motion carried by acclamation. There being nobody to speak for or against Mr. Kline moved to close the public hearing, seconded by Ms. Slonaker. Motion carried by acclamation.

Ms. Slonaker made a motion to approve 24-PC-08 RIPPY, Adam - A request by James Rippy for Rippy Minor (Two Lot) Subdivision; located at: 4860 Underwood Rd., Walkerton, IN Polk Twsp., Zoned A-3 with a favorable recommendation to the Marshall County Commissioners, seconded by Mrs. Johnson. Motion carried with a voice vote 7-0.

Other Business

Tree buffer update

3.130.A Setback Requirements

- 4. Buffer Setbacks

A thirty (30) foot buffer setback from all property lines shall be provided in A-1, A-2, and A-3 Zoning Districts.

a. There shall be no gardens, flowers, trees, landscaping, or other vegetative material deemed by the Zoning Administrator which would restrict the normal agronomic practices of crop or horticulture production.

b. The buffer setback shall not apply to Crop or horticulture Production or Forestry.

c. The buffer setback shall not be required when the property adjoining the property line is five (5) acres or less in area.

There have been no known amendments since the 2007 re-write.

The board discussed many of the scenarios that could happen with tree overgrowth into the neighboring parcel, drifting of chemical spray into the neighboring parcel and the enforcement of a stricter ordinance.

The consensus of the board was to make no changes to the existing ordinance.

2025 Proposed Planning Commission Budget

The plan director brought to the board a preliminary update of the proposed 2025 Planning Commission budget. With regard to a change in advertising legal notices it has also increased

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total dollars spent. The plan is to increase that budgeted amount as well as wage increases as proposed by the council. A full proposal will be presented at the June meeting.

Mrs. Barnhart recused herself to any and all discussions on data centers.

Data Centers

Mr. Miller shared an article with the plan director on data centers and was interested in discussing it with the board.

Back in 2020 an ordinance was written on data centers because there was someone who was looking to come into Marshall County with a data center in relation to crypto currency who later changed their mind. The ordinance we have to date is more in relation to crypto currency, not necessarily what data centers are today.

The plan director shared information from the article.

After reading this article Mr. Miller felt like it might be advantageous for the board to discuss data centers to see if our ordinance is tight enough. After discussion the board's consensus was that they would like to discuss data centers more in detail.

The plan director suggested bringing the data center discussion back to the board after battery energy storage system conversations are done. As time permits the plan director will start conducting research.

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