

APC MINUTES**July 17, 2018**

Members present: John Reece, Aaron Stephens, Jim Hufford, Don Calhoun, Andy Fahl, Bryn Albertson, Gary Girton, Missy Williams

Members absent: Adrian Moulton, Bob McCoy, Dan Vinson, Paula Keister, Amy Alka

Legal Representation: Jason Welch

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

Others present: Ed Thornburg

President Calhoun: It's 7 o'clock and I will call this meeting of the Area Planning Commission to order. First item on the agenda is the approval of the minutes from June 19, 2018. Has everyone got a copy of the minutes, are there any corrections or questions? I will accept a motion to accept the minutes as written. It has been moved and seconded to accept the minutes of the June 19, 2018 meeting as written, all in favor say aye, all those opposed no, motion passes. Next will be the new sign ordinance, 2018-3-A. Is there any discussion on it?

J. Hufford: Are we going to pass this this evening?

R. Abel: That's the plan. We're trying to get it through as quick as we can to satisfy the ACLU. Remember we're going to be doing the Unified Developmental Ordinance at the end of this year. So, technically if there are numbers you don't like there will be an opportunity to tweak that when we go through the Developmental Ordinance. If you see something really glaring in here, then it needs to be addressed.

J. Hufford: I was looking at some of these, like murals. It's not very good, like you cannot keep a name or logo on an establishment for advertising or anything like this. And we have factories over in Union City that advertise by painting the side of their buildings with their logo on it. You know, and that is a mural. It's a mural because it represents their company with their products, is that going to be allowed?

R. Abel: What's there I would guess it would be considered legally established.

J. Hufford: And we've got restaurants, I've seen in the county that have advertising on the side of a building. In a place where you can eat outside, I think this is really limiting.

R. Abel: Well, what we're thinking that it's more or less addressing those either through a variance procedure or putting a special exception on those signs that are not allowed right now. I think it needs overview or you're going to have things going up that the county really does not want. But if the city is happy with something like that, I think we need to address that through the BZA and let them decide.

J. Hufford: So the city would have to come over here and get a variance? Like for our thing at Christmastime when they are putting up decorations?

R. Abel: No, the property owners would have to get a variance, no I don't think the city would have to do it.

J. Hufford: Well, they own the property.

R. Abel: Christmas displays would be another example.

J. Hufford: Yeah, like on our Community Christmas when all these people come out and put up their advertising of their company and businesses throughout the park, and we have an ordinance in here that says they are not allowed to put those signs in the park. So would the city have to come over here and get a variance every time we have the Christmas thing?

R. Abel: I wouldn't say every time, if it's done through a Special Exception it would be a one time thing.

J. Hufford: Ok, well, that's something that we would have to know.

R. Abel: Yes, because we certainly don't want to cut out that type of advertising. Like at the 4-H ground...

J. Hufford: When people over here have their celebrations uptown and put banners across the road, and in here they're not allowed to do that any more.

J. Welch: I think there's going to need to be some tweaking to this at some point at time, I don't know if that's now or this fall. We were discussing several examples.

J. Hufford: There's a bunch of this, I think we're going to have a lot of people who are going to be up in arms.

J. Welch: We don't intend to go out and police this.

J. Hufford: So it's just a feel good ordinance, that's what I call it.

J. Welch: Not immediately, not until we get things worked out.

A. Fahl: Does this ordinance have anything to do with the state highway right-of-way?

R. Abel: No. The state controls all that.

A. Fahl: So if there's a violation in the right-of-way, we still don't have anything to do with it.

J. Hufford: Well, it would be on city streets and stuff, that's what I'm afraid of, it's in here, you can't put signs up in the street, so if you have a tree that falls down and you've got a tree trimmer and he puts signs up in the street he can be arrested for putting signs out in the street telling people they're going to have to go around the tree while he's working there. You see what I mean? Or does he have to leave the tree lay there and come over here and get a variance? You see what I mean? These are the things that are going to come up.

R. Abel: No, I don't think so.

M Williams: You're not going to go policing this, someone would have to make a complaint?

R. Abel: No, and that's a utility company doing something like that anyway.

J. Hufford: A local contractor cutting a tree down during a storm or something where it falls out into the street.

R. Abel: That's a city procedure, and that doesn't count under this ordinance.

A. Fahl: I'm just thinking of the state highway and someone violates and it's visible along the highway and we get a call, this doesn't pertain to that, we're going to refer them to the state highway?

R. Abel: We're more restrictive than the state.

A. Fahl: So what about, I'm just thinking out loud. 4-H has got an animated sign, Randolph Southern has one, and you've got some churches. That's ok, grandfathered in? Is there a setback for those?

R. Abel: Churches are all grandfathered in. Because they've already been given a conditional use to do that. 4-H was a conditional use also. And they've already been told that they can't advertise for people off the premises, to just make money for advertising. Because that's part of what they wanted to do is advertise businesses around the county. And that's not allowed.

J. Welch: Anybody who is there now, is going to be a legally established non-conforming use, which means it can exist, but you're not supposed to change it in any way.

A. Fahl: So basically, you're not going to go out and police it, it's more of a backbone if we have another violation.

J. Welch: The ones that are there are legal.

J. Hufford: How about a billboard that changes? When they put a new advertisement on it every couple of months or so? Are we going to govern that too?

J. Welch: That was our discussion earlier before the meeting because I know of some uptown in Winchester, and there are baseball diamonds that change the signs out on the fence every year. So there are some things like that and then there's a question of does changing the content change the sign?

J. Hufford: Yeah because Union City just purchased a whole bunch of wayfare signs and spent \$12,000 for them and now are they going to have to throw them away? Because we don't conform to what the county wants? They are taking away home rule.

J. Welch: We have discussed a lot of things prior to tonight and one of the things it says is you can't have a sign that advertises a business besides what's on that parcel or lot. And that's going to be an issue I think.

J. Hufford: Yes, like "the gymnasium was down this way"

R. Abel: No, directional signs are allowed.

J. Hufford: Yes, because you're advertising something that is not on that lot.

R. Abel: Well, directional signs are allowed.

J. Hufford: That's what I'm talking about, wayfare signs. Where it tells people the way to get to things.

R. Abel: Those are allowed.

A. Fahl: You've got your political signs, and other signs in the county, thousands of them...

J. Hufford: Political signs are governed by the state.

A. Stephens: I just heard Parker City being mentioned quite a bit, on the ball diamond, are those going to be OK? If they don't expand it on out?

J. Welch: That's one of the things we were talking about, because there are a lot of parks like that.

A. Stephens: I know the little league brings in a lot of money for those signs.

J. Welch: Those are some of my concerns with it.

J. Hufford: That's what I say. You've got people like Randolph County Plumbing, doing work on the streets and stuff like this, when they are working on the sewer and they put up a sign to warn people not to fall in a hole, and take that away are we going to be responsible if somebody does get hurt, drives into that hole because there's no sign there telling them not to? You know, are we going to be liable?

R. Abel: No I don't think that kind of sign is included in this. We don't control the right-of way. That's the cities and the towns.

J. Hufford: It says control in here, it says, will not be on any public property.

J. Reece: I've got a question about what this will do to a car lot? They have lots of signs and gimmicks. Like when they open up the hood and put "sale" and flags and flyers. Or they shoot off whatever, how are you going to control theirs?

J. Welch: They are on their own lots, and they are advertising something where they are. That's different than advertising on a building and saying it's over here. One of the things we're going to have an issue with is not being able to advertise somewhere other than where you are.

A. Stephens: So, if you're having roof work done, you can't put a sign in your yard advertising the person doing the roof?

R. Abel: Yes, those are temporary signs.

A. Stephens: Temporary signs, ok, I just wanted to make sure.

M. Williams: Can you classify those ball diamond signs as temporary signs? They are not up all year?

A. Stephens: They are, though, the big ones are up all year. The ones on the small fence they do take down, but the wooden ones are \$400 each to be put up there for a year.

J. Hufford: According to this, the billboard out here advertising “Referees, this way” advertising that? That’s going to be illegal, the same way with the hotel? The same way with SilverTowne, advertising how to get to SilverTowne, they have a sign up. Are they all going to be illegal from now on?

D. Johnting: SilverTowne has a banner on a gate on property that they own, so that would be legal.

J. Hufford: No, this one is out along the high way. I was just wondering if this was going to affect people like that? But I know, if you start cutting into people’s businesses, it’s their livelihood, they are really going to be scraping.

A. Fahl: Who wrote this? Where did this come from?

R. Abel: Debbie Luzier, the company that we hired to write the new UDO.

A. Fahl: So if we pass this tonight that appeases the ACLU, correct?

R. Abel: Yes.

A. Fahl: And then how does that affect the current sign violation issue that we have right now?

R. Abel: It’s allowed. But not to the size that it is now. It’s restricts the size and the location.

J. Welch: It’s still going to be an established sign.

M. Williams: And actually if you’re on the corner you can put two up, can’t you?

R. Abel: But the square footage is limited.

A. Fahl: Since she wrote this, is this something generic or is it unique to Randolph County.

R. Abel: I’m guessing it is something she has that is generic.

J. Welch: I think it’s probably generic.

R. Abel: I think then we can add on to it or subtract from it as we need to.

A. Fahl: So, to be clear, if we past this tonight, that sign that we have had an issue with will still be there but just reduced in size.

J. Welch: I don’t think we can make them reduce it in size because it’s already there, it’s an existing sign.

J. Hufford: Can we make this retroactive where we can make them change? I didn’t think so.

A. Fahl: Ok, let’s go another way, what if we don’t pass this tonight? What’s the ramifications?

R. Abel: Then the ACLU will probably continue with their lawsuit.

A. Fahl: Which is?

G. Girton: Well, not necessarily if we let them know that we are still deliberating the ordinance.

J. Welch: They are giving us time.

G. Girton: They are not saying that we have to pass this tonight.

A. Fahl: What would their proposed lawsuit be, against the county?

G. Girton: Yes.

A. Fahl: For?

R. Abel: For violation of her civil rights.

A. Fahl: Free speech?

J. Welch: Unconstitutional ordinance. They allege our ordinance is unconstitutional on it's face. They say that if you have to read the sign, you can't regulate that.

A. Fahl: So, we pass this, they drop their lawsuit, the sign continues to be the sign.

M. Williams: With no damages, but if we draw this out, they could decide to seek damages.

R. Abel: Well, the big expense, correct me if it's not true, is what we're paying the lawyers in Indianapolis. So every day this goes on, we are incurring an expense to attorneys in Indianapolis to take care of this.

J. Hufford: Are we giving them more business by people filing more lawsuits after this gets out there?

R. Abel: To file more lawsuits?

J. Hufford: Yes, against us for violating civil rights of businesses and stuff like that to advertise?

R. Abel: No, as far as I know all this is perfectly legal to restrict it to the point that it is restricted in here. Obviously you can make it more lenient, but I don't think we want to make it more strict.

J. Welch: This is pretty strict and pretty restrictive.

J. Hufford: Very, very.

A. Fahl: So, let's back up again, the sign that's the issue was an issue because it's too large, right?

R. Abel: Because it was a sign in residential.

A. Fahl: So, what's the size of the sign, and what was legal?

D. Johnting: Well, it didn't meet the criteria for a sign in residential, the ordinance only allowed a home business, for sale signs, and temporary local sports teams.

A. Fahl: So the size didn't matter? Just the wording?

R. Abel: The wording mattered in as much as it wasn't a for sale sign, or a for rent sign. Our ordinance allowed quasi-commercial uses of signs, so realtor signs, a home business sign, those types of things were allowed. But not one that you would just stick out there and say x,y,z, And so because you had to read the sign to see if it was allowed or not, they said that was unconstitutional. You allow quasi-commercial uses in residential so obviously you allow those types of signs.

A. Fahl: So while we're having an open discussion about this, they get their way, and the sign stays and this makes the lawsuit go away. Is it your advice that we pass this.

J. Welch: Well, I'm not representing the county on that particular lawsuit, they have different attorneys. So, unrelated to that, I know the county's very anxious to get something passed. My personal opinion is I am a little hesitant of just passing something to get it passed, and we did talk about some of those concerns.

A. Fahl: So, you distance yourself from the sign issue, and I get that. But related to this piece of paper, is it your advice that we pass it.

D. Johnting: We could work on it and meet in a week, and it doesn't have to be a month from now, but you saw how difficult it was to pull 6 or 7, 7 or 8 people, and I appreciate everyone for making a quorum every time—that's the goal, but we can meet in a week, 10 days, it doesn't have to be a month from now.

J. Welch: I think we should work on some of the issues, is my personal opinion. We've discussed some of those tonight. We need to get something passed. My reading of this—if this gets out into the public and the public reads this ordinance there's going to be some unhappy people.

A. Fahl: Ok.

J. Welch: And that's not what we're trying to do.

A. Fahl: Ok, that being said, and Jim had some very valid points, if we're not going to police it, and if we're just going to use it as an ordinance if a similar situation happens in the future, then I think we should pass it. Then if not, if we're not going to ruffle any feathers, then maybe we should pass it and it will all go away.

R. Abel: Another way to look at this, is most of these areas we've discussed are open to variances. So it's not like it's absolutely forbidden.

J. Hufford: I hate to see us have an ordinance, where if it had a punishment going along with it, I hate to see people getting arrested for putting up a sign that says yard sale.

R. Abel: Temporary signs are allowed.

A. Fahl: If you take away the state highway right of way, you take away a temporary sign, you take away agriculture signs, you've taken away a huge portion of signs in the county.

J. Welch: And the other thing, like Randy said, we will have the opportunity to revisit this in a couple of months.

J. Hufford: I think it needs to be. We need to actually go through it and actually see what's there and what we want to change.

J. Welch: And, the signs that are there now, are going to be legally established. I can certainly understand if I was an advertiser or I had a bunch of billboards I'm going to be concerned if I saw the ordinance. The signs that are grandfathered can't be changed in any way. You can't take it down and put it back up.

M. Williams: Can they repaint the sign and make it more legible?

J. Welch: I think we have the argument no. After this is passed. That's what we were talking about on billboards can you change the content, is that changing the sign?

R. Abel: So, as part of your concerns, murals are exempt, holiday decorations are exempt, flags and banners are exempt, scoreboards are exempt. So I would say the ball diamonds are considered score board type so they would be exempt. Way finding structures are exempt. So, a lot of these things are exempt actually. Obviously we could put more in there, we could always add to that later it would be pretty easy to do if we wanted to.

A. Fahl: Just out of curiosity what was the cost of this?

R. Abel: It was a total cost as part of the Unified Developmental Ordinance. \$31,000?

A. Fahl: It was part of that package.

M. Williams: Was it her recommendation that by coming up with this that she knows that this would protect the county?

R. Abel: Yes, and I think they've already sent it to the attorneys in Indianapolis and they've sent it to the ACLU and as far as I am aware of it's been approved by all of them. That may be part of the reason why it's so restrictive.

J. Hufford: Have they said they'd accept this?

G. Girton: No, they haven't.

J. Hufford: Have they said they'd drop the lawsuit or anything?

M. Williams: So, what is it we have now that we think we're going to lose that we think we can't function without. Now we know that Christmas decorations are ok, and the ball diamonds are fine. So what signs is it now that is going to upset people? Murals are fine.

J. Welch: I think the ball diamond signs on the fence would be iffy. Billboards like uptown would be iffy. Because there's no offsite advertising permitted.

M. Williams: What billboards, I'm not sure I understand.

J. Welch: You know the ones on Melton's building?

M. Williams: Ok, yes, I understand.

J. Welch: There are signs on that building that are not permitted under this ordinance. So, it's whether they would be legally established and be allowed to continue.

J. Hufford: Like you said, we can modify this?

A. Fahl: I move we accept this as written with possible adjustments or review in the future.

J. Welch: It would just be for a favorable recommendation. Then it would go out to all the cities and to the county and they would decide whether to pass it or not.

J. Hufford: If we do that, make a favorable recommendation with amendments and things to be done in the future?

J. Welch: There couldn't be generic contingent amendments, we'd have to pass it as is, but there could be amendments made to it in the future, and we are doing large-scale amendments in the fall.

J. Hufford: Ok, I'll second the motion.

President Calhoun: It's been moved and seconded that we give this a favorable recommendation. Roll call vote please.

D. Johnting: Don Calhoun, yes, Gary Girton, yes, Jim Hufford, yes, Bryn Albertson, yes, Missy Williams, yes, Aaron Stephens, yes, John Reece, yes, Andy Fahl, yes. Favorable recommendation.

R. Abel: What I would suggest is that everybody go through this, and write down your concerns, and we already have a steering committee developed to make changes to the Unified Development Ordinance. Let us know what your concerns are and we can address those in the future. And I will also say that as this Developmental Ordinance goes along, she's going to do two or three articles at a time, the steering committee's going to look at it, and what I would suggest is that we probably have a meeting every month from now til December so that we're not looking at a big change at the end, we are only looking at two or three articles at a time. So then as we give those suggestions, then it goes back again. So we don't get a big picture at the end and we're trying to take it all in at once.

J. Hufford: It would be nice to get things ahead of time instead of getting it the night of the hearing.

D. Johnting: I sent out a group email on July 2, some got it, some did not. I will check and make sure you get it next time. I don't want that to happen again.

President Calhoun: Any other business that needs to be brought up at this time?

A. Fahl: Has the office had any contact from EDP or anyone else regarding solar?

R. Abel: Not from EDP, we had another company show interest in putting in solar.

President Calhoun: I thank everyone for coming this evening, meeting is adjourned.

President, Don Calhoun

Vice President, Bob McCoy

Secretary, Dan Vinson

Recording Secretary, Debra Johnting