

**Minutes of the Owen County Plan Commission**  
**August 7, 2008**  
**Owen County Courthouse, Commissioner's Rm. 2<sup>nd</sup> Floor**

**Members Present:** Michael Branham, Citizen Member  
Gwen Dieter, Citizen Member  
Dwight Dunigan, Citizen Member  
Mark Evans, Ag Extension Agent  
Regina Gephart, Citizen Member  
Anton Neff, Council Member  
Benton Pittman, Citizen Member  
Wiley Truesdel, Commissioner Member  
Gib Tucker, County Surveyor

**Public Present:** Juanita Grayson  
Saundra Johnson  
Richard Lorenz  
Kathy Williams  
David Williams  
Jeff Sturgill

**Opening Meeting**

Anton Neff Open meeting with Pledge to the Flag

**Approval of Minutes**

Gib Tucker: Motions to approve the June 26<sup>th</sup>, Minutes as written

Wiley Truesdel: Seconds the Motion

Passes 7-0-2 With Benton Pittman and Mark Evans Abstaining

Gwen Dieter: Motions to approve May 1<sup>st</sup>, minutes as written

Mark Evans: Seconds the Motion

Passes: 8-0-1 with Benton Pittman abstaining

## **Old Business**

Juanita Grayson/Jerry Meadows, Re plat of East Ridge Acres

Juanita Grayson came before the Board on the June 26<sup>th</sup> meeting to ask for a re plat of East Ridge Acres lot 2 and 3. The Board advised her she needed to show that the existing building on lot 3 would be twenty five feet from the new property line. Also the Board would like to have an idea of where the septic on lot 2 was so that the new line would not effect the septic system. Both of these items have been obtained showing that the building on lot 3 is now twenty five feet from the new property line and that the septic system is on the north side of the home on lot 2.

Mike Branham: Did the surveyor re stake that for you?

Juanita Grayson: Yes he did.

Dwight Dunigan: Motions to approve the re plat

Gib Tucker: Seconds the Motions

Passes: 9-0

(Issue begins at 030 on tape)

## **New Business**

No New Business

## **Other Business**

Richard Lorenz spoke with the Board on past issues the Board has had.

- 1) Board Members wanted clarification from our County Attorney, some comments on conflict of interest. How petitioners with private business versus County business, how that works and maybe what steps he might take to alleviate any concerns there might be with that.

Richard Lorenz: The difficult problem with conflict of interest, it has many different aspects. When you are talking about conflict of interest for example Board Members having some inter relationship with the petitioner, let's take that example. If there is a business relationship with the petitioner it would appear to be a first blush that there is a conflict of interest and the member should abstain in that regard. If there is social knowledge of the person, that is not enough to ever qualify as a conflict of interest. Even if they are next door neighbor. Now wisdom may also dictate to the member that it would be inappropriate to cast a vote in that situation because it could be awkward in that regard. If there is any involvement that a Board member may have in the actual petition

because he would benefit from anything that is done by that venture. Is there another kind of conflict that we need to talk about.

Anton Neff: One of the concerns was with being in your case the County Attorney that type of thing.

Richard Lorenz: In those cases I try to let the County know, I will give you a good example I have one with the Town of Spencer. Cook approached us for a tax abatement through and we consulted with them in length on many meeting. I did give advice and council to the Cook group and billings made for certain services provided in terms of notifications that are required by law for them to provide for these kinds of cases. They had their own separate council as well. Those things do occur and they are not illegitimate in any regard. When I appear before the Board again I am trying designate whether I am appearing in my cap as a County Attorney or official because D.J. and I will talk almost invariable before everyone of these meeting to determine if there are any issue that we've got that I can add insight to. If I represent the petitioner I will try to disclose that particular circumstance as well. Sometime the representation of the petitioner though can take the form and I charge them for the cost of preparing all the documents to prepare and present before the Board. It was for the benefit of the County. There is no simple solution to that in a small town you are going to have Attorney's constantly having inter relationships with many of you or other wise who will be overlapping in regards. I would suggest to you keep in mind you are trying to keep an opened mind and an unbiased line about what is going on. I suppose every Attorney is always torn in trying to present anything that is apparently where he is presenting the matter to try to get it approved that there is always a concern. You just have to rely on the representation and the reputation of the person that are presenting. That is all you can do. It is impossible in a small town. I know in Monroe County the planning commission has had enumerable questions like that over and over again that are insoluble in some cases.

Wiley Trusdel: I have been getting questions to about the County Attorney and the Plan Commission Attorney in representing people and you coming here to tell us it is okay, evidentially you are charging those people right I assume.

Richard Lorenz: Not all, No

Wiley Truesdel: If you represent the Plan Commission and the County Commissioners, my opinion is, you should not take that business. Not this Board that is just my opinion.

Richard Lorenz: That is fine I am happy to avoid those situations. I would say to you in every case that we have taken money it has been for the preparation and investigation of the notices and the things that had to be done as a procedural matter.

Anton Neff: So kind of like a valued service to the County stand of point, not as a private Attorney so to say.

Richard Lorenz: The problem is that again working over the situation we have had in the past, we have not had as much experience as we need to have with the Planning Commissioner and the County with working with these problems. So getting the people through the procedural aspect of it was designed to try to answer the learning curve.

Benton Pittman: As long as he is not rendering an opinion I do not see a problem.

Mike Branham: What if he appears with the petitioner and we need some legal advice too.

Richard Lorenz: Then that would present a conflict. Hopefully I have been trying to cull those cases where I have that kind of circumstance about and that we don't have those type of situation. Some of those we have had are re platting situation for example where I have taken information that we have leaned from the Health Department and from the Surveyors Report and from the Assessor's Office and the Auditor's Office and the Recorder's Office and have put it all together in terms to provide the information available. Sometimes I can see in my circumstance that the answer is direct and that there is not a legal controversy in my mind at that time. If there is one that may arise at that time that is fine and I can step back at that point in time. We often as Attorney's will get into something only to find a conflict exist that we did not know about before and at that moment when that conflict arises then back away.

Anton Neff: I do not think we have had yet up to this point a legal conflict situation I know we have had a few situations where you might have represented a petitioner personally directly as their Attorney. And there as been discussion but I so not recall any legal conflict.

Richard Lorenz: I am trying to cull those from the very beginning, if they have that kind of aspect I am referring them on to other people or advising them of what they need to do to present themselves in front of the Board. But again I think the comments are going to come from the public not understanding the process or not understanding what we are doing and why they are being done. I am not making money doing this at preparing notices for a hundred dollars does not really constitute a real enforcement of legal fees.

Mike Branham: I think one of the more complex ones that came here was Louella Scamihorn. Because that one had some.

Richard Lorenz: I did not charge her legal services for that one.

Michael Branham: Is that right.

Richard Lorenz: I charged her for things that she did after the plat was approved with regards to the things that she was doing with those persons. But not for the legal services provided in the planning.

Anton Neff: I think one of the good things that came out of that particular situation was that we cleaned up something that was even more messier than before.

Richard Lorenz: To the Counties stand point there is almost no way to avoid her petition and approve it.

Anton Neff: Is there any other questions in respect to Conflict of Interest?  
(Issue starts at 160 on tape)

2) A discussion on splitting up Agricultural land into to two classifications.

Richard Lorenz: to tell you the truth I had hoped that that this year we would begin the process of a redraft the language of the Planning and Zoning Ordinance. It has come to my attention and yours that we have found ambiguities and inconsistency with in the text of it that has arise to many problems and we would like to redraft that. I have preliminary drawings of that. Your proposal of Ag1 and Ag2 is basically fine, we need to expand all of this. These all need definition they all need to be put in an ordinance in the appropriate locations. I guess I would like to debate with you on two items you have in Agricultural 2. Wireless towers have a separate chapter under the present ordinance structure, and I have a tendency to argue that we should keep that separate. Because the requirements on that are going to get even more particular over time. You may actually fine that in the future it may be appropriate to place a wireless tower on what would other wise be described as residential property.

Anton Neff: I remember in our initial discussion, one of the reasons that we wanted to pursue a one and a two is because we wanted to narrow the I guess the definition or the uses of just Ag. Because a lot of farmers and a lot of agricultural because it had that name on it were thinking cell phone. So we wanted to restrict it a little more so that folks that did live stock and crop farming are totally different things then some one who has a hog farm or more of an industrial oriented farming. Which cell phone being more commerce driven and that type of thing would maybe fit better into that. But you are saying maybe a third its own classification.

Richard Lorenz: It is its own classification, and I think because of that it gives you the opportunity actually to be more particular about it, and to put more restriction or conditions in what you are looking at then to subsume it under agricultural two. The other one is kind of interesting is veterinarian offices. Once again there is a question as to which it should be commercial area and be allowed there. I suppose you could argue that it be in both locations but if you do it with one then you are going to be stuck with having to get a variance to be put in it in the other. What I would like to do with this entire subject matter is present to you and then to the Board of Commissioners an update, and we can do this one right away we can put an amendment into the current ordinance to break these things out. Now remember once you break them out, it is not going to automatically be apparent to what is already zoned as agricultural how this has affected that particular property. We will have to go back in a get all the properties that are agricultural right now and figure out which of these two categories they are going to fall

into. I do not think that any person that has the property right now will be able to, we will probably not be able to something to their card except indicate are preference that it be said that until the next transaction of transfer to occur. It would be grandfathered under the old agricultural name. So the effect of all of this is going to be prospected in the future and some distance down the road. The good news is that I agree with you that the ability to talk about some of these areas will allow you to focus some of your attention of kinds of activities that will occur and some of these types of things. For example in kennels and confined feeding operations you will want to know a lot more then if it is merely a grain operation.

Anton Neff: What is the next step at this point?

Richard Lorenz: I will draft something then propose it to you. You will then approve or disapprove type thing. If it is approved then we move forward with the Commissioners to see if they would want to enact that as an amendment to the ordinance itself. I think we can get that done by the September meeting.

Wiley Truesdel: Can you tell what the advantage is.

Richard Lorenz: The only thing like I said before is, It would make your focus clearer as to what kind of operation. When you have a confined feeding operation it can be a significant type of operation. I think it has been done in other particular areas to break it out and talk about it separately and have different distinctions about it.  
(Issue begins at 290 on tape)

3) Closure on Milbourne's that the Board has brought up in the past.

Richard Lorenz: Michael Bonnell sent me some literature sometime back in February and I have been talking to D.J. about it as well. Apparently the Milbourne family had a larger track land which was the area that was used as the creosote plant. They have sold off a couple of their parcels that were up there. One to a Mike Fowler I believe and one to a Donald Richardson. These are both one acre tracts of land. The property as a totality had been determined by IDEM to be inappropriate as residential use because the contamination on it exceeded the State level of a number of chemicals including arsenic. What Mike had done with the Milbourne's and had negotiated an agreement that they did not want to tear down the building at that time and they had already sold off a tract to one of their children and they did not want to destroy the residential structures on the property. So in exchange to allow them to continue to use those properties as residential they provided a release and waiver for any law suits or a covenant not to sue the County in the event there was any contamination or any other problems they may have with using the property residentially. I would argue that that fiat the effect of all that was to give that property a conditional use because IDEM said it can not be residential it must be commercial and only commercial. So arguably on the Assessor's record on all three of these properties that we are talking about, it should show commercial, and as a footnote to that the property should have as to the residential portion that they have a conditional use as residential. Now the conditional use as residential would only run with those

properties so long as the residential characteristics would maintain. It is my understanding that one of the successors, Mike Fowler his property sustain a fire and the house had been destroyed. As a result in this the residential characteristic of this was gone so the conditional use was gone and therefore would fall back to commercial zoning criteria. It appears the Richardson property may still carry the nonresidential that it is a residential property and actually that should be changed. The other part of it was, and I think Mr. Fowler indicated he wanted to expand a salvage operation that existed not on his parcel but to an adjacent parcel. As you recall on prior discussions with you, everything in zoning is based upon what is at that time when zoning is applied. So it has a footprint, so whether it is grandfathered, or authorized to be something what ever that boundary perimeter allows is what it is and if you try to expand it you are going beyond the footprint and you will have to get permission to do so. Which means, Planning Commission permission, or BZA permission depending on what you are trying to do. It is not sufficient to say it was all commercial and therefore that commercial use is automatically permitted. That would not be accurate. That does not mean that could never have that characteristic or use it just means it has to have permission.

Anton Neff: How do we fix the issue?

Richard Lorenz: Well there is nothing before the Board right now to do, I don't think. There is no application to do anything so there is no motion to act on or an application to act on.

Anton Neff: What about from a violation stand point, I think that is more of where we are thinking.

Richard Lorenz: Well if they have aggressively pursued using the property that was not part of the permit for a purpose that was not previously authorized then that would be a violation.

Anton Neff: So where do we stand with that?

Richard Lorenz: I did not know that was a condition.

Anton Neff: I think that warrants an investigation, it was our concern in prior meetings that they are in violation. There is something going on that is not adding up with that. We need to figure out the best way to determine that and then correct it. What do you suggest as a next step?

Richard Lorenz: I think D.J. or the persons is working the Building Department will have to help us determine what the circumstances are out there now. The physical use of the property type thing and does it violate the original footprint that was out there. If that is true then there are in fact notices that will have to go out to them, the owners of the property, that they are not using that in accordance with those conditions and we will go from there.

(Issue starts at 470 on tape)

### Sandra Johnson

Sandra Johnson came before the Board to ask them what they could do with the levy on the South side of the river. She feels that this levy has cause and will cause future flooding for the Town of Spencer. The Board explained to her that they did not have the authority on this issue and that this is a State of Indiana and the Department of Natural Resources issue. This Board could not do anything about the levy. The Board also informed her that the USDA is reviewing this issue.

(Issue begins at 680 on tape)

### Williams and Sturgill

Mrs. Williams was informed to come to the Board to ask them about the buyout program due to her home being flooded out during the June 2008 flood.

Anton Neff: So your question is how do we get started on a buy out? And how do you go about doing that?

Kathy Williams: I am where I'm supposed to be.

D.J. Bault: That is what the Indiana Department of Homeland Security told her.

Kathy Williams: This happened to me in 1993 and I tried to find out how to do the buyout then because I knew what was going to happen again.

Anton Neff: Here is what I think we need to do, because this is the first I have ever heard of it. We are going to have to review it and see what we need to do, or what we can what we cant do. There is too many unanswered questions to address it tonight, unless someone else wants to jump in here. My guess is there will have to be some kind of action by the Commissioners or the County to kind of put some kind of program or participation in place anyway before we can even act. So we will go ahead and take the information review it and take it to the attorney and the Commissioners and then we will have to get back with you if that is okay.

Kathy Williams: How long will that take, we are living in the upstairs of our home only.

Anton Neff: It depends, in all honesty I can not give you a time, Because I do not know the details. It is hard telling with the Federal stuff if there is a lot of hoops to jump through it is going to take a lot more time then if there were not a lot to jump through.

Richard Lorenz: If the authority exists it would be elective as apposed to mandatory. I don't want these people going away from here thinking that they can compel the County or FEMA to do a particular thing. Let me give some light to this whole thing. There is another entity that has stepped forward to try to deal with persons that have been displaced. That is the Owen County Community Foundation and their committee that they have. There are case workers who are assigned to a group who are working with

individual cases such as these. What I would like to do is put them in contact with a caseworker so that they might assist and go through every potential remedy that may be available. Including temporary housing, volunteer cleanup and stuff like that.

Richard Lorenz then gives information of a contact to the Williams and Sturgill for the above mentioned program.

Next meeting is scheduled for September 4<sup>th</sup>, 2008.

### Adjourning

Mark Evan: Motions to Adjourn

Regina Gephart: Seconds the motion.

Passes: 9-0

Next meeting is scheduled for September 4<sup>th</sup>, 2008

Minutes approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008

Minutes prepared by Daniel J. (D.J.) Bault, Plan Commission Administrator

\_\_\_\_\_,  
Anton Neff, President

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Regina Gephart, Vice President

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Benton Pittman

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Gwen Dieter

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Mike Branham

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Wiley Truesdel

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Mark Evans

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Gilmer Tucker

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Dwight Dunigan

