

DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION
April 2024 REGULAR MONTHLY MEETING
AGENDA

DATE: April 4, 2024

PLACE: Commissioners' Court Room
3rd Floor, Delaware County
Building

TIME: 6:00 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Nathaniel Carroll
Jerry Dishman
Shannon Henry

Teresa Hensley*
Jesse Landess
Michele Owen

Rickie Sipe
Christopher Smith
Allen Wiseley

Advisory Members

Tom Borchers

Justin Curly

Adam Leach

MINUTES: Consideration of the March, 2024 Meeting Minutes.

NEW BUSINESS:

MPC 03-24A Jurisdiction: County Commissioners

Being a consideration of a Resolution of Approval to Amend the text of the Delaware County Comprehensive Zoning Ordinance regarding large solar installations. Specifically, Article XXXI Section 13 D 2 & 3 correcting language in the ordinance.

LEGISLATIVE ACTION:

DIRECTOR'S REPORT:

ADJOURNMENT:

*Terms expiring; members serve until new appointments are made.

DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION
April 2024 REGULAR MONTHLY MEETING
MINUTES

The Delaware-Muncie Metropolitan Plan Commission held its regular monthly meeting on Thursday, April 4, 2024 at 6:00 P.M., in the Commissioner's Court Room of the Delaware County Building, Muncie, Indiana. President Allen Wiseley called the meeting to order.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Ms. Swackhamer called roll and the following members were present: Mr. Carroll, Mr. Dishman, Ms. Hensley, Mr. Landess, Ms. Owen, Ms. Sipe, Mr. Smith, and Mr. Wiseley. Absent: Mr. Borchers, Mr. Curley, Mr. Henry, and Mr. Leach.

MINUTES:

Mr. Dishman made a motion to approve the November 2023, and the March, 2024 regular monthly meeting minutes. Mr. Smith seconded the motion. Voting in favor: Mr. Carroll, Mr. Dishman, Ms. Hensley, Mr. Landess, Ms. Owen, Ms. Sipe, Mr. Smith, and Mr. Wiseley. Voting against: None. Motion carried.

NEW BUSINESS:

MPC 03-24A Jurisdiction: County Commissioners

Being a consideration of a Resolution of Approval to Amend the text of the Delaware County Comprehensive Zoning Ordinance regarding large solar installations. Specifically, Article XXXI Section 13 D 2 & 3 correcting language in the ordinance.

Mr. Wiseley asked Ms. Swackhamer to give a brief explanation.

Ms. Swackhamer stated that at the November, 2023 Plan Commission meeting the proposed setbacks of a solar facility from a non-participating owner containing a dwelling were proposed as follows: D,2 was initially to be 200' measuring from solar facility fence to property line, and D, 3 was proposed to be 250' measuring from solar facility fence to a dwelling. She stated that at that meeting, a motion was made to increase the setback in D, 2 from 200' to 500', which was then approved. She stated that there had been no change to D, 3 at that time to appropriately reflect the increase of the D, 2 setback. She stated that currently no proposed change to the 500' setback is being made, only addressing the issue that the D, 3 setback as is of 250' does not properly relate to the D,2 setback of 500'. She stated that the first resolution written was discovered to be incorrect, and the revised resolution had the corrected language and would only change D, 3 to be 550', and keep D, 2 at 500'.

Mr. Wiseley stated that what was originally listed in the legal notice was 200' for D, 2 and 250' for D, 3, and based on advice from Mr. Murphy, he would like to have a motion to amend MPC 03-24A to reflect the 500' setback for D, 2 and 550' for D, 3 and would be what the Board would be considering and what best represents the intent of the November 2023 meeting.

Mr. Dishman made a motion to amend the resolution to MPC 03-24A. Ms. Owen seconded the motion.

Mr. Wiseley restated that this was just a motion and vote to amend the resolution to be D, 2 a setback of 500' to the non-participating property line, and D. 3 a setback of 550' to the dwelling. He stated that this again was not final passage, just an amendment to the text of the proposed resolution, and then the Board would hear public comment and vote on final adoption.

Voting in favor: Mr. Carroll, Mr. Dishman, Ms. Hensley, Mr. Landess, Ms. Owen, Ms. Sipe, Mr. Smith, and Mr. Wiseley. Voting against: None. Motion carried.

Mr. Wiseley stated that he wanted to make sure that it was clear what the proposed setbacks were before public comments were heard since there had been some confusion. He stated that he had the sign up list with the names and addresses of those wishing to speak, and when your name was called, please get to the podium and try to keep the comments to around 3 minutes.

Mike Catron, 1000 E. CR 700N, Muncie, Indiana, appeared. He stated that he did not have as much to say now that he understood the resolution better. He stated that the website showed a different version last week, and he asked if there would be another change at some point.

Mr. Wiseley stated that the amendment was to make the setbacks 500' and 550' for the 2 setbacks.

Mr. Catron stated that a week ago it was different than this one.

Ms. Swackhamer stated that was just a mistake.

Mr. Wiseley stated that due to the mistake, the amendment was just made.

Mr. Catron stated that he nothing to add based on the changes.

Joe Russell, 3501 E CR 700N, Eaton, Indiana, appeared. He stated that he had been a member of the solar task force, and that they had many great discussions for almost a year with Ms. Moody, and that they could have used 1-2 more meetings. He stated that one of the biggest issues was the setbacks, and their final meeting was when they had agreed on the 200' and 250' setbacks. He stated that at the November meeting, the task force recommendations became 500' and he had left that meeting a little confused that all of their hard work could be changed without much discussion from the Board. He stated that a lot of leases had been signed based on Ms. Moody's original ordinance, and now the rules have been changed and he was not sure that those people who had signed leases would agree with the changes. He stated that the new words and new numbers would have a great impact on the future of solar farms in Delaware County. He stated that he rented a farm in the Albany area which was 54 acres, and under the original ordinance it would have held 45 acres of panels. He stated that the way he interpreted the new rules with those setbacks it would allow for 5 acres. He stated that the owner's sons were counting on solar to keep the family farm

supported and running for the next generation. He stated that in Randolph and Jay County, they were moving forward with solar, along with Grant and Blackford County, and it would be painful to be left sitting on the sidelines of green energy investment. He stated that he liked the initial ordinance and the setbacks of 200' and 250' because that was a good compromise between the non-participating and participating land owners. He stated that large setbacks would also contribute to a large waste of farm ground.

Mr. Wiseley called Chris Musick, who forfeited his time.

Katie Williams, 5004 W. Churchill Ct., Muncie, Indiana, appeared. She stated that she would be reading a statement from Linda Hanson, the President of the League of Women Voters of Muncie-Delaware County, and the President of the Indiana League of Women Voters. She stated that Ms. Hanson would recommend that the Plan Commission move, second, and adopt the following motion in place of what had been placed on the agenda. She stated that would be for the Delaware County Solar Ordinance to eliminate the current setback standards and replace them with Indiana's voluntary default setback standards for commercial solar installations which was IC 8-1-42-10. She stated that those standards were as follows: A Commercial solar energy system may not be installed or located on a property unless the distance measures in a straight line from the nearest edge of the systems panels, 40' to the nearest edge of right-of way for any highway, 30' to the nearest edge of the right-of-way for any collector road, 10' to the nearest edge of the right-of-way for any local road, 50' to any non-participating property line, 250' to a non-participating dwelling unless a landscape buffer was installed, and panels could not be more than 25' above ground level, and that these requirements could be waived with a written consent of each non-participating property owner, and that she encouraged the Board to adopt this motion.

Mr. Wiseley called David LaRue, who forfeited his time.

Sheryl Swingley, 3908 N. Vienna Woods Dr., Muncie, Indiana, appeared. She stated that the solar ordinance debate in Delaware County will only end when Indiana's recommended setbacks was accepted. She stated that she was opposed to the 500' setback which should be no more than 250' between non-participating dwellings and a solar facility. She stated that she wanted to remind the Board that county officials should be acting in tandem with the State, and that they had an obligation to protect the property rights of all citizens, including the farmers so that they can use their land as they wish. She stated that if they did not accept the State's recommendations for solar, they were telling farmers that they must plant crops, and there was news that the US Government wants less corn planted because this was an over produced crop. She stated that if farmers are being told they had to plant crops, would we soon tell them which crops to plant. She stated that Delaware County had rejected wind turbines which would have allowed for alternative energy. She stated that Delaware County needs to work now to gain recognition that we are ready to contribute to the state's needs for alternative energy. She stated that the 2 direct consequences of not producing alternative energy would be an increase in brownouts and a continued increase in electric bills. She stated that the solar study group's original setbacks that they worked on for over a year, met the state standards only to be changed. She stated that she asked the Board to accept the motion from Linda Hanson, that was just presented by Ms. Williams.

Daniel Straka, 1845 Azalea Dr, Munster, Indiana, appeared. He stated that he was with the Land and Liberty Coalition, which was a project of the Indiana Conservative Alliance for Energy. He stated that he would like to echo the comments made by Ms. Swingley and Ms. Williams, and that

the Indiana State standards were a good place to start when looking at setbacks regarding solar. He stated that he was recently in 2 other counties dealing with solar ordinance issues, and it seemed that across the state everyone thinks that the best way to deal with protecting property rights was to increase the setbacks. He stated that the larger the setbacks, the more ground that a developer would want to lease because they would need more ground to meet their project, and the setbacks were not the answer. He stated that private landowners and farmers should be allowed to use their land as they please, and they should go back to the 250' setback.

Robert Koester, 2709 N. Burnell Dr., Muncie, Indiana, appeared. He stated that he had been at that address for 40 years, and been a citizen of Muncie longer. He stated that he appreciated how difficult this topic was since there were different views of protection of property rights and ownership of land. He stated as Mr. Russell pointed out, the proposed ordinance would really exacerbate the issues of property rights that would be experienced by Mr. Russell versus his surrounding property owners. He stated that the idea was that you had the right and freedom to use your land as you would like, and this seemed to violate that fundamental idea. He stated that as was just pointed out, larger setbacks mean the bigger area to be developed in order to get that fixed amount of productivity, and if this recommendation was adopted, it could double or quadruple the acreage in Delaware County that would need to be covered in panels to meet that need. He stated that the best way to deal with the concern of controlling visual exposure to the panels is with guidelines that require buffering with vegetation and could easily be done. He stated that he fully supported the proposal from the League of Women Voters, and he would encourage everyone to stay in step with the State of Indiana and their recommended guidelines. He stated that if we do not, we would be the 1 county that does not experience the economic growth that would come with solar installation development. He stated that other counties were already receiving tax income from the development of solar farms, which goes to schools and other needs of their communities. He stated that adopting the recommendation of the League of Women Voters seemed like a reasonable alignment with the State's recommendations, and would ensure that as a county we become competitive with our nearby counties. He stated that if we were to adopt an outrageous setback, we would need to step away from our county line in order to allow a solar farm and would risk being declared a non-solar friendly community, therefore missing out on an enormous amount of tax revenue and income.

Sue Errington, 3200 W. Brooke Dr., Muncie, Indiana, appeared. She stated that she was opposed to the current and proposed setbacks because both were confusing and excessive, and that she instead recommended that Delaware County use the language in IC 8-1-42. She stated that this code stated that panels needed to be measured in a straight line at least 50' from the non-participating property owner's property line and at least 250' from the edge of the solar panels to a dwelling. She stated that the motion proposed by the League of Women Voters conforms to that Indiana Code, and she urged the Board to adopt that motion. She stated the laws enacted by the Indiana General Assembly over the past 3 years showed that the state was embracing renewable energy. She stated that Indiana law provided a model wind and solar energy ordinance for local government use, and that there were resources for those who wanted to become certified as commercial wind and solar ready communities. She stated that there were no grant funds available yet, but next year a new 2 year budget will be enacted and that she was sure that Director Hadley was putting together a request for those funds right now. She stated that if a local government was not certified as solar ready, they would have no chance to receive any of those funds. She stated that IDEM recently published the State's priority climate action plan to reduce pollution and green house gases, and that they identified the electrical sector as the highest of six polluting sectors. She

stated that the plan included measures to reduce Indiana's pollution and that that the number 1 measure was to maintain, develop, and expand utility scale renewable energy. She stated that this was the direction the state was going, and stated that this Board was in a position to help Delaware County move forward in renewable energy.

Harrold King, 18300 N CR 500W, Gaston, Indiana, appeared. He stated that he agreed that there were many counties going all in on solar development and that Wabash had a permanent moratorium on solar. He stated that the current solar ordinance had zero protection for the 99% of the people not involved with solar development. He stated that the study group spent 8-9 months in heated discussions and compromise, and came up with 9 items that they agreed would help protect everyone. He stated that none of those items were adopted, and that a 500' setback was proposed from a property line. He stated that a 2 acre parcel, it would not be uncommon to be 250' to the property line, so he could have solar that close on 3-4 sides, and that was not acceptable. He stated that he kept hearing that solar would have no impact on his property value, and that Mary Clinton Clay actually finds that properties within 3 miles would be impacted by solar development. He stated that he would hope they kept the 500' from a property line, not a dwelling since that would be the only protection some people had within this ordinance.

Tim Niccum, 9335 N CR 500W, Muncie, Indiana, appeared. He stated that when he arrived tonight, he thought he had a good understanding of the clarification, but when looking at the language, he is not so sure now. He stated that the proposed change to D 3, was a change to 550' from the solar fence to a non-participating dwelling, and asked if that was correct. He stated that he had thought that was from the property line itself, and that based on this he would recommend voting against this. He stated that for the last several decades, if you purchased land in the county and wanted to build a house, there was a 5 acre minimum, and that he suspected that the majority of the houses where solar would occur were several hundred feet from their property lines. He stated that where he lives, his closest property line was 250', so he would have a fence within 250' of his property and that was just too close.

Mr. Wiseley stated for clarification that from the fence to a property line would still be 500', and then from the fence to the house it had to be at least 550', and that in Mr. Niccum's case, it would be 750' from his dwelling.

Mr. Niccum stated that he would be in favor of this clarification now that he understands it. He stated that also served on the solar committee with Mr. Russell, and that setbacks and the property value guarantee were 2 of the tougher issues that were discussed. He stated that the committee did finally agree on the 250' setback was a compromise by adding a property value guarantee, which was thrown out. He stated that he would like to add that it bothered him when he heard property owner rights when he hears that from the view point of the farmer or the land owner that wants to lease his ground for solar. He stated that he agreed that they had rights, but that he also had rights on his 75 acres in the county and by having a solar ordinance, no rights have been taken from anyone wishing to lease their land for that use. He stated that what was left out of the conversations were that the 99% that would be surrounded by industrial solar needed to be protected from industrial solar plants. He stated that he did not want to be fenced in or listen to the invertors humming all day and night, and thinks that some of those important recommendations from the solar committee were not adopted, the remaining items need to remain. He stated that if the state thought the best thing would be to make a 50' setbacks, it would not have been a guideline, it would have made it a law, that county government had the power and knowledge and care enough

to make the rules. He stated that Madison County had a very good ordinance that handled the growth of solar facilities very responsibly, and that Grant County was fighting solar. He stated that classifying him as someone staying in the 20th Century, was ok because he was not willing to jump over a cliff over everything that comes along claiming to be the best way to do something. He stated that he appreciated the protections that were in place, and as he now understands the ordinance, he thought it sounded good.

Mr. Wiseley called John West, who forfeited his time.

Vickie Gasaway, 1260 S CR 900W, Daleville, Indiana, appeared. She stated that she was a 5th generation farmer and that she was opposed to what some of the other farmers thought about solar. She stated that she had spent a lot of time researching renewable energy that was happening throughout the state, and across the nation. She stated that this was not a few hundred acres, but that it was hundreds of thousands of acres that was being taken out of production as farm ground, and being placed under solar panels. She stated that this was a push not from local or state government, but from the UN telling us that we needed to reduce our carbon emissions. She stated that no one is mentioning that if you look at the PJM website, the approved plans for Delaware County show numerous data centers, which takes up energy. She stated that companies want to take up as much property as they can for renewable energy, and get those credits and then tie in a data center next to the solar facilities. She stated that all of the energy that is being mentioned, would actually be taken up by all of the data centers. She stated that she also served on the Together DM Coalition, and some of that language talked about saving future farm ground, and some language allows for green energy to be developed in the community. She stated that if she wanted to continue to farm the way that her family did 20 years ago, she would not be able to due to planning and zoning. She stated that if she wanted to build a CAFO, she would be told that it was polluting the land and that the setbacks would be so great to even try. She stated that if she wanted to build a Dollar General in her field, she would also be told no, because of zoning and land use rights. She stated that property rights were one of the largest arguments in this county because it was our greatest values. She stated that when industrial solar was installed around someone's home especially on 3 sides, it will depreciate their property value and everything that they had worked for. She stated that the talk about other counties installing so much solar, we need to mention Madison County that does not allow solar to be on more than 2 sides of a surrounding property owner. She stated that as soon as you are a county with property owner value guarantees, the solar companies will not want to develop in your county, because they know that solar development depreciates property values. She stated that while everyone was talking about all of the revenue that would be coming to the area because of solar, we are forgetting to take into account that the Baker Tilley report did not include all of the property values that would be affected. She stated she appreciated the clarification to the language, but that 500' was still not enough of a setback, and that there were people in this room that were going to be surrounded by solar.

Mr. Smith stated that he was not on the Board when this was originally discussed and asked why the task force did not adopt the Indiana recommendations.

Mr. Wiseley stated that the task force was made up of 9 members with an equal number of members in favor, in opposition and neutral to solar, with Ms. Moody as the Chair. He stated that those 9 people made compromises, and together developed an ordinance that best met their feelings and what was best for Delaware County versus what state legislators have recommended for the state of Indiana.

Ms. Smith asked if the recommendation from that task force was a 500' setback or the 250' setback.

Mr. Wiseley stated that it had been the 250' originally and was in conjunction with the property value guarantee. He stated that when the Plan Commission voted to not include the property value guarantee, they correspondingly raised the setback to 500' to offset that difference. He stated that Ms. Owen ultimately made that motion and asked her if that was correct.

Ms. Owen stated yes.

Mr. Wiseley stated that some of the members had been here since the beginning of this ordinance discussion, and some have come in along the way, and he appreciated everyone.

Mr. Landess asked Mr. Murphy about the state guidelines versus what was proposed here, and asked if there would be any action from the State to force Delaware County to adopt their guidelines.

Mr. Murphy stated that they were specifically guidelines, and not a force of law. He stated that there was funding that could be attached by meeting those guidelines that the county would not be able to receive as a result, but we were well within in the law.

Mr. Smith asked if the original 250' that was being amended was in line with that Indiana code.

Mr. Murphy stated that the guidelines called for smaller setbacks, but that we were not bound to follow them by the force of the law.

Ms. Swackhamer stated that Mr. Niccum had sent an email, and asked if he would like to have that read since he spoke.

Mr. Niccum stated he did not mind if that was not read.

Ms. Swackhamer stated that an email was received from Jason Kuchmay, attorney represented a number of Delaware County residence in opposition to the solar ordinance (please see attached letter, which was read for the record). Ms. Swackhamer stated that staff did respond to his email, explaining that the 500' setback would not be changed, that it would only be making the language between D 2 and D 3 be in the correct ratio, as it was before the change to D2.

Mr. Wiseley asked if staff had received a response.

Ms. Swackhamer stated no.

Mr. Murphy stated that amendments were ultimately made in conjunction with the County Commissioners, and that this was a recommendation that will be forwarded to them, and that if they recommend any changes we would go through that process of meeting again. He stated that the Plan Commission was also using the same notice that had been used and been effective, and that he no concerns over what was published in the newspaper.

Mr. Dishman made a motion for a favorable recommendation of MPC 03-24A, to adopt Article XXXI Section D 2, at 500' and D3 at 550'. Mr. Carroll seconded the motion. Voting in favor: Mr. Carroll, Mr. Dishman, Ms. Hensley, Mr. Landess, Ms. Owen, Ms. Sipe, and Mr. Wiseley. Voting against: Mr. Smith. Motion carried, a favorable recommendation will be forwarded to the County Commissioners for their April 15, 2024 regular meeting.

LEGISLATIVE ACTION:


Ms. Swackhamer stated that there was no legislative action to report, and reported that the March BZA meeting had been cancelled due to a lack of quorum.

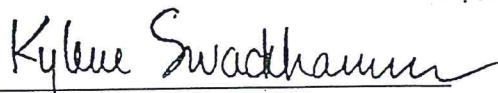
DIRECTOR'S REPORT:

Ms. Swackhamer stated that she had an updated report for the Board that provided them with information on the Building Commissioner, Transportation, and Land Use sides of the office (see attached chart).

Mr. Wiseley stated that he had talked to the Commissioners several times, and that hopefully they would be appointing someone soon.

ADJOURNMENT:


Allen Wiseley, President


Kylee Swackhamer, Secretary

MaryAnn Pope

From: Kuchmay, Jason <jmk@smk.law>
Sent: Monday, April 1, 2024 12:40 PM
To: Kylee Swackhamer; Denelle Murrell; MaryAnn Pope
Subject: MPC 03-24A / objection to solar ordinance revisions
Attachments: Setback exhibit.pdf

CAUTION: This email originated from outside of Delaware County Government. Please *do not click links or open attachments* from an *unknown* or *suspicious* sender.

As you know, I represent a number of property owners in Delaware County and they have asked me to reach out to confirm their objection to MPC 03-24A, which seeks to make significant changes to the setback's applicable to solar facilities in the county, and which is scheduled for public hearing on April 4. First, any amendment to an ordinance must be made by the Commissioners. I.C. 36-7-4-602(b). Amending an ordinance is not within the authority of the Plan Commission who can only make a recommendation to the Commissioners. The draft resolution provided to me suggests that the Plan Commission is proceeding contrary to its statutory authority. Second, the Plan Commission's notice for a public hearing on an ordinance amendment must provide a summary of the proposed changes. I.C. 36-7-4-604. Here, the notice for the April 4 meeting does not provide any summary at all. Perhaps more concerning, the notice states it is merely "correcting language in the ordinance." That is false and very misleading. Without providing the summary and referring to it as merely a correction, people reading the notice are unlikely to attend the public hearing, thinking it is....as the notice states, just a correction.

Third, the resolution sought is not a correction, it is a very substantive change. For example, as it stands, the ordinance imposes a setback of 500 feet from a non-participating owner's property line to the solar security fence. The proposed change reduces that to 200 feet and would also provide a setback of 500 feet from a non-participating dwelling. Attached to this email is a drawing reflecting how the proposed change would impact one of my clients, whose home is 230 feet from their property line. The proposed change would allow the solar facility to be 230 feet closer to my client's home. That is not a correction, but a substantial and detrimental change. Not only would the development be closer, but it would enable my client's home to be surrounded by solar on three sides (which was not the case before). Additionally, the planning department is advising my client that they cannot build anything in what would be the new setback. Thus, it would seem the County would be effectuating a taking of my client's property as well.

Please accept this email as my clients' objection to MPC 03-24A, and their request for the Plan Commission to reject the proposed ordinance amendment. This email will also confirm that I have been authorized to file a lawsuit challenging the amendment if it is passed for the reasons noted above.

Thank you.

Jason M. Kuchmay, Esq.
Snyder Morgan & Kuchmay LLP

4211 Clubview Dr.
Fort Wayne, IN 46804
Telephone: (574) 457-3300
Facsimile: (574) 457-2056

April 4, 2024 Plan Commission Director's Report

Building Commissioner:

Permit Applications filed YTD 2024

2024 Month	Bldg.	Elec.	HVAC	Plumb.	Demol.	Total Permits	Total Fees Collected
January	10	11	7	3	0	34	\$4,954.35
February	17	8	4	9	3	46	\$5,307.00
March	26	21	3	3	3	56	\$8,438.25
April	1	2	0	0	0	3	\$225.00
May							
June							
July							
August							
September							
October							
November							
December							
Totals =	54	42	14	15	6	139	\$18,924.60

2023 Total Permits = 637 *2023 Total Permit Income = \$159,740.35

Inspections Completed YTD 2024

Bldg.	Elect.	HVAC	Plumb.	Complaints Investigated	Total Inspections
115	93	57	66	37	368

- April 15th Unsafe Housing Meeting 10:30 following Commissioner's Meeting
 - 5 houses on April Agenda
- Tornado Aftermath Damage Assessment

Other:

- Unified Planning Work Program (UPWP) approved by TPC and submitted to INDOT for final approval
- MITS Accessible Transportation Program

Land Use & Development:

- BZA – still in need of a new BZA member to be appointed by County Commissioners. Commissioners have not received any interested persons
- BZA March meeting canceled due to lack of quorum

Other: