MINUTES OF MEETING OF
WASHINGTON COUNTY PLAN COMMISSION
Held February 4, 2013 at 7:00 p.m.
Council Chambers—City Hall Building

This public meeting was called to order by Attorney Thomas E. Scifres at 7:00 p.m. Attorney Thomas E. Scifres took roll, and those present were Jeff Souder, Phil Marshall, Danielle Walker, Jim Day, Lane Freiberger and David Hoar. Absent were Adam Dufour, Scott Maudlin, and Shawna Humphrey. David Hoar then presented the Board with the minutes of the December 2012 and January 2013 meeting. Phil Marshall made the motion that those minutes be approved with Lane Freiberger seconding. This motion passed 6-0.

The first order of business was a presentation by Dr. Albert Hebert, Professor of Agriculture and Biological Engineering at Purdue University. He welcomed the opportunity to speak, stating that some results from a study he had conducted for the EPA had been mischaracterized in a written report by outside sources, which were submitted by citizens at our last monthly meeting. He wanted to clarify the nature of his study and address the criticisms. He explained that he and a group from Purdue University had been commissioned to conduct a study, the need for which arose out of a lawsuit between some large farming operations and the federal government. His Power Point presentation included the following information:

A livestock facility has several sources of air pollution including the buildings, waste storage, land application, feed storage, and mortalities. Along with these there are potential issues of neighborhood nuisance, animal and human health concerns, and compliance with regulations. He spoke about air emissions of livestock including odor, ammonia, hydrogen sulfide, particulate matter, greenhouse gases, organic compounds, and pathogens. Each presents the question of how bad is it to some one's health and how much is emitted from a farm, once emitted from the farm how far does it go, and what can be done with issues.

Ammonia is released during manure decomposition, it's attractive to water, and it's inside the livestock barn where it can be a daily nuisance. It is deadly at 5,000 ppm, which you will never see on a farm. The typical levels are 5 ppm to 50 ppm. Your eyes become sensitive at 20 ppm to 25 ppm. He then showed a slide of concentrations at a dip pit finishing house over a 1-year period with daily averages, which varied a lot. In the summer, it is around 1 ppm to 3 ppm then in the winter it can be 25 ppm. Hydrogen Sulfide is released when manure is decomposed as well. When using a liquid manure system it stores in the bubbles and releases when agitated. The OSHA 8-hour

threshold for hydrogen sulfide is 10 ppm. The Minnesota Air Pollution Control Agency has a rule for property line H2S concentrations; these can be monitored by a portable device and if its reads 50 ppb or higher they will set up a monitor and continuously monitor the amounts for several months. He was told that they hardly ever have to bring out the devices for measurement. These type of concentrations can be measured in our own breath. The dental industry uses a hydrogen sulfide meter to evaluate bad breath. Particulate matter is the nuisance dust.

He went on to discuss some of the issues that producers face, including private nuisance suits due to odor and State actions for odor and other matters, where there can be fines and abatement assessed. The State can have both indirect (permits, certification for operators, restriction on land applications and set-backs) and direct (property line thresholds where readings have to meet a limit regulations as well, lawsuits and consent decrees if violated) impact on operations. The Federal Government does not regulate odor but they do have the Clean Air Act to enforce so they do have the right to sue operations as well as test those facilities. The Federal Government also has the Community Right to Know laws which covers ammonia and hydrogen sulfide. Laboratory studies regulatory models help to increase knowledge of these issues. However, he feels regulatory models are often shaped by untimely political and societal pressures and are marked by simplicity, unfairness, arbitrariness, and inaccuracy. It is his hope that scientific research can help to clear this information up.

There are currently eleven (11) studies being done at Purdue University on air quality. He also stated that one (1) of the studies and its results were grossly misrepresented in a report by Environmental Integrity Project in March 2010 and that report was viewed by the Plan Commission at the last meeting. Mr. Heber then discussed high pollutant concentration at a specific location on a farm does not mean that there will be high concentration for the neighbors. The impact on the neighbors depends on the concentration and the air flow that goes along with wind characteristics. When he evaluates odor he measures the concentration as well as intensity, persistence, and character. When evaluating nuisance at a location, you must look at the frequency it occurs and how long it occurs. Concentration tapers off with distance from the facility. From the manure surface to the inside a barn to outside the barn the numbers drop dramatically. He has been working on setbacks for some time and the odor impact depends on the production of the odor, the transport, and the tolerance of the neighbor. Excessive setbacks will hinder opportunities and he feels there needs to be a balance. He recommended that setback requirements should depend on the size,

shape, facility orientation, the emission rates, the atmosphere, the building density, wind frequency, exposure angle, manure storage, trees and topography, land use, and abatements.

The Purdue setback model was established to take into consideration the direction neighbors are from the farm. Each neighbor's setback would vary depending on prevailing winds. It also includes the land use factor, topography, and abatement factors to reduce setbacks. This model is supported by science, easy to educate producers and other about odors, and minimizes the human emotion factor that sometimes affects the issue. The setback guidelines for 8,000 finishing hog facility, depending on the size, positioned north to south with manure being removed more than once a month, the setbacks would range from 1318 feet to 1512 feet depending on the wind rows. At a farm with 1,000 finishing hogs in Evansville, Indiana the setbacks turned out to be about 500 feet. With 16,000 finishing hogs setback guidelines comes out to be 2,023 feet.

He discussed how Minnesota has developed a setback guideline that is a little different, but Mr. Heber does not like it because it does not consider wind direction. So for an operation with 18,000 heads, with the goal of being 94% odor free, you would only need to be about 250 feet away, but to be 99% odor free you would have to have a setback of 1,400 feet.

David Hoar thanked Dr. Heber for his presentation and providing the information to the Plan Commission. He again stated that the data presented at the last meeting in an article from the Environmental Integrity Project (an environmental group) was either misunderstood or they misinterpreted. He came to this meeting to set the record straight that the article had Purdue's name on it, but Purdue had nothing to do with the article or the representations in that article. The group had obtained some date submitted to the government pursuant to a FOIA request and incorporated that into its paper without contacting him for an explanation of the data. Because there were some things they did not understand, the group's representations in the paper we received are misleading. David Hoar asked for guidance regarding this Plan Commission trying to come up with set-backs. Dr. Heber stated that 400 foot set-back from residences recently adopted by IDEM has nothing to do with odor and is more of a water quality matter. David Hoar asked for advisement in trying to address the nuisance aspect when individual tolerance varies. Dr. Heber again referenced his presentation and not depending on one (1) set number for every farm. Things such as size, quantity, and bio-filters of each farm and some science being used in the calculation would be his suggestion. He went on to discuss Randall County using his set-back model and broke it down into small, medium, and large farms and had set-backs for each. He also feels that abatements are a good thing to look at as well. That way if farms could make improvements that would change the factors of a

set-back distance to make them be able to be reduced then they could pursue that as well. Population density was then discussed and a model from the Minnesota off-set program was discussed as well as the recommendation for that. There was discussion of whether it would be possible for the Plan Commission to adopt the Purdue set-back model for each proposed farm, as data could be entered and in as little as sixty (60) seconds we would have a calculated set-back specific to the conditions.

Keri Keller Steele then presented the latest ordinance draft. A discussion ensued about the process that has been a part of forming of this proposed ordinance. There was at one time a point system being discussed for proposed farms whereby points would be awarded for meeting certain criteria when looking at site placement. Mitigating factors would lead to more points, decreasing the set-back. However, the point system was ultimately dropped during a discussion of the reciprocal set-backs, in favor of something that the drafting committee felt would pass. Next the developmental standard portions of the draft were discussed.

Larry Lang, a member of the audience, interjected stating that he felt like if the current standards were passed that there would be legal issues arise from that. He prefers the Minnesota set-back guideline system. He thinks it would be beneficial to look at other ordinances and see how they have worked and what issues, if any, they have had.

David Hoar then asked the Commission their thoughts on the current proposed ordinance. Dr. Heber was asked if his model was maintained and usable by anyone and stated that it was. Lane Freiberger stated he would not be against leaving the current language in the proposed ordinance and adding a portion discussing the evaluation of site placement by using Dr. Heber's model. Attorney Scifres stated his opinion that adopting such a rule was not advisable for two reasons. First, there should be more of an "ascertainable standard" upon reading the statute, which would not be possible. Second, there was no understanding by the Plan Commission of the complexities of the formulas in the model, there are no guarantees that the model will continue to exist on the Purdue website, or for how long. Kari Keller-Steele stated that she uses the data in the Purdue model often and it is an amazing tool but still is not a regulatory tool even though she feels it has a place in decision making. If the wrong data set was being used by someone there is a lot that can go wrong. At the end of the day, a zoning code is a political thing and everybody needs to know where the regulation line is. She does not think you could ever define that line with the style of data used in the Purdue model input.

Phil Marshall asked Kari Keller-Steele to show the map of the County showing the areas affected by setbacks around residences. He also stated that the points system looked at early on was a good idea and is not sure why it was done away with. He knows there are variables for the lay of the land throughout the County and wonders how you can set the same standards when part of the County is flat and another part is rolling hills covered with trees. Attorney Scifres explained that if the trees and hills are between the closest neighbors of a farming facility then it largely won't matter. Phil Marshall said he feels that it is hard to compare different farms in different areas to each other a blanket regulation. Lane Freiberger stated that his opinion was that the Commission should pass the current proposed ordinance and get it implemented and then re-visit it. He is not opposed to a point system and feels it would be better, but is interested in getting something on the books that is better than what we have now. Jim Day liked the points system but during the sub-committee meeting had to look at other ways to get something started and something to work on for the future. Danielle Walker's concern about the current draft is that it may not necessarily go along with the Comprehensive Plan. She also liked the points system basing each site of its placement and if the Plan Commission feels like the points system would have passed then why didn't it proceed with it. Jeff Souder stated that whatever is decided needs to be workable with the individuals and the resources already present. He also would like to know what Plan Director, Travis Elliott, thinks about this draft. Kari Keller-Steele's opinion was, and still is, that what she heard from the public and sub-committee members is that a points system would not be passed. David Hoar then asked Max Greene, a member of the sub-committee, for his remarks.

Max Greene believed the points system had a few problems that need worked out. Part of the contention, as he understood it, was that the reciprocal set-backs issue was tied to the points system, and reciprocal set-backs would not be acceptable. With the reciprocal set-backs gone he feels there is a chance for the point system to be looked at. David Hoar then asked Dr. Heber about Randolph County's way of dividing farm operations into small, medium, and large groups. Randolph County used the Purdue model to develop a simple table. Kari Keller-Steele then looked at Randolph County's ordinance on-line and shared it with the Plan Commission. Randolph County does have stair stepped set-backs, based on farm size, as well as reciprocal set-backs in their ordinance.

David Hoar asked Travis Elliott his thoughts about the process. He felt the Commission should probably go with the current draft for now.

The proposed zoning map for the County outlining the districts was reviewed. It was noted that incorporated towns, which would be affected by this ordinance if they have not drafted their own zoning, was discussed. Kari Keller-Steele mentioned at this time it seemed that Livonia had not taken the 2-mile fringe in their ordinance for the town. Jeff Souder noted two (2) areas shown as R-1 but they are not incorporated towns. Kari Keller-Steele said those areas showed up on the GIS map provided to her by WTH. Jeff Souder said it didn't bother the map to call it as an R-1 district if that's want they want to do. She presented the map, with blue dots representing properties that have been assigned an address. She then showed the impact of 400 and 750 foot set-backs by placing red areas around those properties. David Hoar then discussed the possibility to look at population density and set-backs. Attorney Scifres said he really thinks it comes down to parcels and what may give the Plan Commission problems is when someone has a 15 acres parcel next to a residence does that alter their ability to use their land. Kari Keller-Steele stated that the proposed 200 foot property line set-back will cause a bigger problem across the board than the difference in the set-back from a residence. She feels like if you wanted to look at one of those two issues then look at the property line set-back.

Garry Barriger, a member of the audience, asked if the Commission had considered the expansion of those operations. He referenced that other counties looked at it as the larger the operation the greater the set-back needed to be. David Hoar responded that if someone expanded to a larger operation then their set-backs would be inconclusive to that set-back at that operation. If the ordinance passes as it is now, if someone would expand a facility the new construction would have to meet the new regulations.

The set-back being greater surrounding a school verses a residence was then discussed. Professor Heber explained that a school has more children present and they are a more vulnerable population. They have no choice but to be at the school. Gary Barriger asked if a child at school needed more protection than a child at home. Attorney Scifres also commented that it has to with the whole concept of population density as well. When you are close to a school there is a very dense population there. The discussion was to have a greater set-back where there are more people gathering. Dr. Heber then clarified his response in agreement, as related to the tolerance issue.

David Hoar then asked the Plan Commission if there were any changes to be made to the current draft. Attorney Scifres requested the right to make some non-substantive changes and clarify some wording, which the members agreed to. Phil Marshall made the motion to proceed with making the draft ordinance into a public document for review by the public and proceed with

the public hearing. Lane Freiberger seconded the motion and it passed with a 6-0. The public hearing was set for March 4, 2013 at 7:30 p.m. copies of the draft ordinance will be placed at the Public Library, Auditor's Office, Plan Commission Office, Indiana Proud web-site, and on the Washington County web-site for the public to review.

After some concluding remarks from the public, and there being no further business before the Commission, Jim Day made a motion to adjourn the meeting, seconded by Lane Freiberger. The motion passed 6-0.

David Hoar, President

Scott Maudlin

Lane Freiberger

Adam DuFour

Phil Marshall

Jeff Souder

Jim Day

Danielle Walker

COMMISSION ATTORNEY

Thomas E. Scifres