

DELAWARE COUNTY COMMISSIONER'S MEETING  
MONDAY, NOVEMBER 20, 2023 @ 9:05 A.M.  
COMMISSIONERS COURTROOM  
100 W. MAIN ST. ROOM 309A  
CALL TO ORDER  
WELCOME  
PLEDGE TO FLAG

**ORIGINAL**

ROLL CALL

- Mr. Shannon Henry
- Mr. James King
- Ms. Sherry Riggin
- Ms. Danyel Struble, County Attorney
- Mr. Ed Carroll, Auditor

APPOINTMENTS

MOTION: Commissioner King made a motion to appoint Mr. Dan Gibson to be on Public Defender Board (3 year) term.

SECOND: Commissioner Riggin

YEAS: Commissioner King, Commissioner Riggin, President Henry

MOTION: Commissioner King made a motion to approve Mr. Steve Slavin to be on the Airport Authority Board (4 year) term.

SECOND: Commissioner Riggin

Commissioner Riggin mention that Dr. Alexander passed away and had been very instrumental on that committee.

YEAS: Commissioner King, Commissioner Riggin, President Henry

MOTION: Commissioner Riggin made a motion to approve Ms. Nikki Kirby to be on Animal Control Board (3 year). Ms. Kirby replaced Dr. Jim Turner who served on the board for nine years.

SECOND: Commissioner King

YEAS: Commissioner King, Commissioner Riggin, President Henry

Appointments are effective 11/20/2023, per Ms. Sara Hodges, Commissioners Executive Assistant.

APPROVAL OF MINUTES

MOTION: Commissioner Riggin made a motion to approve November 6, 2023 Commissioner minutes.

SECOND: Commissioner King

YEAS: Commissioner King, Commissioner Riggin, President Henry

CONTRACTS FOR AGREEMENTS FOR APPROVAL

THOMAS REUTER CONTRACT

Ms. Emily Anderson, Court Administrator, provided the Thomas Reuter contract, this is a 5-year renewal for law books.

MOTION: Commissioner King made a motion to approve the contract for Thomas Reuter.

SECOND: Commissioner Riggin

YEAS: Commissioner King, Commissioner Riggin, President Henry

The full signed agreement can be found in the Auditor's office.

11-20-2023 ORIGINAL

WEST ORDER FORM - For West Complete Print and ProView eBook Products Only  
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*em*



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| Order Confirmation Contact Name EMILY ANDERSON               |  |   |  |                |
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| Westlaw Password Contact Name (for password delivery)        |  |   |  |                |
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5/15/2023

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BEING A RESOLUTION OF APPROVAL TO AMEND THE TEXT OF THE DELAWARE COUNTY COMPREHENSIVE ZONING  
ORDINANCE REGARDING SOLAR ENERGY  
ORDINANCE 2023-021

President Henry said this is the second reading, the Public Hearing and first reading occurred November 2, 2023. One issue was the acreage requirements. President Henry asked that Ms. Denise Smith, Recording Secretary, document in the minutes if 6,800 acres (4%) is reached that the Commissioners would, at that time, send it back to the Plan Commission for a hearing and amendment on that part of the ordinance.

Commissioner King asked Ms. Danyel Struble, Attorney, "that being placed in there (ordinance), it doesn't have to go back to the Plan Commission?"

Ms. Struble said if the Commissioners adjust this in the minutes and then adopt that ordinance, it stands as adopted, as presented and then the process starts when it is decided to review. At any time, the Plan Commission or the Commissioners can move to change that ordinance. Ms. Struble again if it is in the minutes than it is adopted, as it was presented. Anytime the Commissioners or Plan Commission decide to bring that ordinance back-up to review and or for any changes, it would be adopted as presented.

Commissioner King wanted to make sure it does not go over 7,000 acres unless it is presented back before the Commissioners.

Ms. Struble said the ordinance won't say this unless it is sent back to the Plan Commission but your minutes will state the 6,800 acres, then as soon as you're notified to that 6,800 acres then it could be brought up and sent to the Plan Commission.

Commissioner King stated he does not want it to go over the 4%.

Someone in the audience said that no one in the hallways can hear anything. The problem is the echo.

President Henry said "Let's start over, what I asked was if it is 6,800 acres, which would be lower than 4%, then the Commissioners would then review the ordinance and send it back to the Plan Commission."

Commissioner King asked if everyone understood the question he asked Ms. Struble and her response.

Commissioner King asked if the resolution/ordinance is passed today, can they go over the 6,800 acres, as of today. If it is passed and in the minutes. Commissioner King said if the ordinance is passed, he does not want it to go over the 4% or 6,800 acres. Commissioner King is fine with the setbacks and everything else in the ordinance with the exception of the 4% and 6,800. What Commissioner King does not want is to go back again to the Plan Commission and start the process all over. A solar company can not come in and go over 6,800 unless they come to the Commissioners.

Commissioner Riggan asked how many solar companies have signed up and what the total acreage would be.

Commissioner King said he was able to get a signed contract to view and this started in 2020, however Commissioner King said the Commissioners did not know anything about it until July 2021 when the tax abatement came before Council. Community members are saying it is two farmers, however, it is approximately eight. Commissioner King again

Commissioners minutes held November 20, 2023

stated his concern is the acreage and 4%. With it being in the minutes, can someone come in and say well its in your ordinance.

President Henry said when a solar company completes an application, the Plan Commission would notify the Commissioners.

Ms. Brandy Ingermann, Plan Commission Office Manager, said adding the 4% to the ordinance, it would go back to the Plan Commission and accepted then all is good with the ordinance.

Ms. Cynthia Bowen, Rundell, Ernsberger & Associates said she was hired by the Plan Commission to put the ordinance together. This acreage initially was based off the number of farmland and increased to 4%. Unless this is changed to 6,800 acres and a cap is placed on it, the percentage could increase if the number of farm ground increases. To keep this from happening, 6,800 should be used as the cap. Because the 4% was placed in the ordinance that number can change. So, if that is what you want then 6,800 needs to be changed.

Commissioner Riggin said what happened to the 3,500 acres that the committee recommended.

Ms. Bowen said the Plan Commission increased that number at the November 2, 2023, Plan Commission meeting.

Commissioner Riggin said the committee recommended 3,500 with a vote of three for, three against and three neutral.

Ms. Bowen said the group did several calculations but used 175,000 acres, based on the census, 2% of 175,000 is 3,500, somewhere close to 1,680 acres as the maximum size or total amount of acres devoted to solar farms, 2% of 170,000 is 3,400 acres. This was used as a maximum. They took three votes on it and imposed 2% limit on the number of total acres in the county that could be under panel with a vote of five yeas and four nays.

President Henry said the bottom line is that a vote now or later has to be done.

Commissioner Riggin thanked the committee for reviewing the pros and cons and understands this is a hard decision. Commissioner Riggin said it is putting "junk" on good land that helps the community, why does Delaware County have to be the one. What is going to happen in 10-20 years, it is such a new product to put out in the field, drainage is a concern and how does this get repaired. Commissioner Riggin said it is not a good mix.

Mr. Tim Niccum said before the committee came up with a 2% cap on farm land, the committee presented information from the Indiana Utility Regulatory Commission, the information was backed by a representative from Hawthorne Solar. The committee discovered that Delaware County's infrastructure would only allow approximately 5,000 acres of panels to be built and hooked up to a grid. In an attempt to not throw the county wide open, the committee compromised on 2% and 3,400 acres. This would allow the facilities to come in but would not open the county to everything. If the acreage goes up to 5,000 acres, not only will farm ground be covered in solar panels but Delaware County will start having the companies insisting that they build battery storage parks. Mr. Niccum said this is a battle that will hit Delaware County like a ton of bricks. Solar projects will then say that they cannot capture energy, the farmers have already signed land leases for battery storage parks.

Commissioner King said he knows nothing about the battery storage parks. Farmers sign the leases and then give it to the Commissioners to regulate, do the setbacks, and set the acreage while the Commissioners get nothing except tax revenue. Tax revenue is good because right now there is not enough coming in to pay Sheriff Deputies, Highway and county employees what they deserve.

Commissioner King said if the revenue comes in for the Gaston area then it should go to help Gaston with water projects and waste water projects, however, Commissioner King does not want the whole county in solar panels. The Commissioners have been dealing with this since 2021 and he would like to pass the ordinance. COVID and the 2022 death of Ms. Marta Moody, Plan Commission Director, has delayed the process. Commissioner King wants only 6,800 acres. If the grid cannot take more than 5,000, then if the ordinance was passed the county couldn't go over this amount, if passed today. The 4% and 6,800 can go back to be changed.

Commissioner Riggins said 4,080 is signed up so go with that.

Ms. Struble said the Commissioners have a decision to make. Today, November 20, 2023, it is being passed at 20%, as is.

Commissioner King said this is a tough decision.

President Henry wants everyone to understand this has been tough and complicated on everyone. As many are for it are against the ordinance.

Commissioner King said he is not the one who has the property or signed the lease. If the farmers would not have signed the lease, then the Commissioners would not be sitting in the meeting discussing it. The Commissioners job is to regulate and King wants this passed. The Commissioners are not getting money per acre. If a change is made then the ordinance goes back and Commissioner King does not want that. *The only thing that can be changed is the 6,800 and Commissioner King wants to make sure everyone knows that.* If it is not changed within the 45 days than 6,800 acres goes into effect.

Ms. Struble said that is correct.

Commissioner Riggins said if the Commissioners adopt it today then it is done with the 20%.

President Henry said unless we take it back.

Commissioner King said are we going to continue to have problems? The biggest issue is the acreage.

Ms. Struble said you mean reject every section that was presented to you? If so, then you start the entire process over.

Commissioner Riggins said her understanding is the valuation of the property is that the Commissioners are wanting to put in but it has never been tested in court and that is why it is being denied.

Ms. Struble said she only reviewed what the Plan Commission minutes said in that regard and she did not research on whether that had gone to court.

Commissioner Riggins said Mr. John Brooke, County Attorney, said it had not been tested and as a county we could be liable and have to make up the difference of the property.

Commissioners minutes held November 20, 2023

Commissioner King again stated he only wants the acreage to be changed and nothing else.

Commissioner Riggan will not go for 6,800 acres, this is not doable and Commissioner Riggan said 4,080 acres is all she'd go with.

Commissioner King said he'd do the 5,000 and it would be sent back to Plan Commission.

Ms. Struble said correct. If it would go over 5,000 this would trigger the change and an amendment would take place.

President Henry asked Commissioner Riggan if she'd be good with 5,000. He could put it in the minutes.

Mr. Ed Carroll, Auditor, said he was not aware of the changes in acreage. If the ordinance is adopted and the acreage is changed in the minutes and a company files a petition or an application to do acreage greater than 6,800, is the county obligated at that point or can it not be stopped because the current ordinance allows for this or can it be stopped because it is in the minutes.

Ms. Struble said if the ordinance is passed, the legal answer is if nothing is stopping them from coming in and doing that. Your ordinance as it would stand is. The minutes would unilaterally state that it can at any time be changed and brought back before the Commissioners and start the process. As it stands, a company could come in, complete the application and start the process.

Ms. Bowen said a moratorium is in place until December 31, 2023, unless it is extended. It is specifically 35,000 acres in the ordinance. It could be passed today, make an amendment and then send that amendment back to Plan Commission and have it changed or reject the line item and suggest 5,000 or 6,800 and send back to Plan Commission to hear it at the Plan Commission January 4, 2024 meeting, which is 45 days from now.

Ms. Struble said any change made goes back to the Plan Commission for that change.

Ms. Bowen said this is her professional recommendation, to extend the moratorium until this is passed because once that moratorium expires and that lag is in there, until the Commissioners can come back and pass, the current ordinance is in effect on the acreage and an application can be filed and the solar company is vested under that old ordinance for three years.

Ms. Ingermann said Plan Commission does not typically have a meeting in December, however a Special meeting could be set.

Commissioner King said the Commissioner meeting on December 4 would be too soon, but they have another one on December 18, 2023. Moratorium is in effect until 12/31/2023.

**MOTION:** Commissioner King made a motion to approve, as presented with amendment of exception on section 8b to reduce 35,000 acres to 5,000 acres. That proposed amendment will be sent to Plan Commission Board for a special meeting (not determined yet) for approval of the acre change.

**SECOND:** Commissioner Riggan

**YEAS:** Commissioner King, President Henry

**NAYS:** Commissioner Riggan

Commissioners minutes held November 20, 2023

ALLOWING PUBLIC DEFENDERS TO HAVE KEY FOBS TO ACCESS COURTROOMS  
RESOLUTION 2023-026

Ms. Struble asked that Resolution 2023-026, Allowing Public Defenders to have Key Fobs to Access Courtrooms be tabled until a later date.

MOTION: Commissioner King made a motion to table Resolution 2023-021, Allowing Public Defenders to have Key Fobs to Access Courtrooms.

SECOND: Commissioner Riggan

YEAS: Commissioner King, Commissioner Riggan, President Henry

DEPARTMENT HEADS AND ELECTED OFFICIALS

Ms. Carrie Dye, Highway Office Manager, asked that the Commissioners approve and sign the liquid asphalt contract through 2024 construction season. This would lock in the price.

Lock in the price for all of 2024

MOTION: Commissioner Riggan made a motion to approve the contract with Asphalt Materials, Inc.

SECOND: Commissioner King

YEAS: Commissioner King, Commissioner Riggan, President Henry



www.asphalt-materials.com

~~10/20/2023~~  
11/20/2023

November 15, 2023

Delaware County Board of Commissioners and Highway Department  
100 W Main St  
Muncie, IN 47305


Dear Delaware County,

Asphalt Materials, Inc. requests that the County extends the 2023 liquid asphalt contract through the 2024 construction season. This document is to serve as an Extension Agreement for the liquid asphalt bid. Thank you for allowing us an opportunity to supply Delaware County with their liquid road construction material needs.

All of the above terms are acceptable by Delaware County Board of Commissioners.

Signature  Date 11.20.23  
Shannon Henry

Signature  Date 11.20.23  
James King

Signature  Date 11.20.23  
Sherry Riffin

All of the above terms are acceptable by Asphalt Materials, Inc.

Signature   
Nate Jenkins  
Title – Sales Representative





WEIGHTS AND MEASURES REPORTS

CLAIMS

MOTION: Commissioner Riggin made a motion to approve claims in the amount of \$1,121,812.42.

SECOND: Commissioner King

YEAS: Commissioner King, Commissioner Riggin, President Henry

PUBLIC COMMENTS, QUESTIONS, OTHER BUSINESS & DISCUSSION

To listen to comments regarding solar ordinance, please click on this link

<https://www.youtube.com/watch?v=hh5DuHgVis8>

Commissioners  
11/20/2023

**SIGN-UP SHEET FOR PUBLIC COMMENTS**

(3 minutes per speaker)

| SPEAKERS NAME      | ADDRESS                           |
|--------------------|-----------------------------------|
| ✓ ROBERT KOESTER   | 2709 W. BURNETT                   |
| ✓ Linda Hanson     | 1400 W. North Muncie              |
| ✓ Robert Shroyer   | 7110 E Centennial Muncie          |
| ✓ John Taylor      | 305 S Hutchinson Ave Muncie 47303 |
| ✓ ERIC BARK        | Delaware County IN                |
| - Sue Weitand      | 1224 W. Weber Dr. Muncie 47303    |
| - Kelly Watson     | 35205 meeker                      |
| ✓ Sue Errington    | 3200 W. Brook Rd. 47309           |
| ✓ Jeff Stephens    | 19401 N Jonesboro R. Gaston 47342 |
| ✓ STEPHYL SWINGLEY | 3908 N. VIENNA WOODS DR 47304     |
| ✓ Daniel Straka    | 1845 Ataker Dr. Muncie 46321      |
| ✓ Kristina Wheeler | 111 Monument Cir. Indy 46201      |
| ✓ Ryan Richards    | 10191 W 1200 W GASTON IN 47342    |
| ✓ Harold King      | 18300 N 850 West Gaston 47342     |
| ✓ TIM W NICCUM     | 9335 NCR 500 W MUNCIE             |
| ✓ Kody Light       | 9800 NCR 525 W Gaston, IN         |
| ✓ Victoria Gasaway | 1260 S. C.R. 900 W Daleville IN   |
| ✓ Brittany Mauck   | GASTON                            |

RECESS

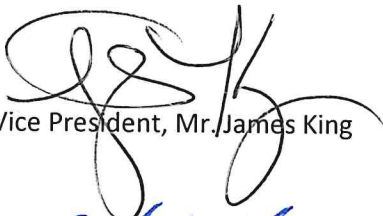
MOTION: Commissioner King made a motion to recess until December 4, 2023.

SECOND: Commissioner Riggan

YEAS: Commissioner King, Commissioner Riggan, President Henry



President, Mr. Shannon Henry



Vice President, Mr. James King



Member, Ms. Sherry Riffin



Auditor, Mr. Ed Carroll