

## Lack of decision by County Area Plan Commission may result in courtroom appearance in near future

Written by Marty Randall

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Lack of action by the Scott County Area Plan Commission (APC) on Wednesday night, October 14, on a requested modification of terms attached to recent approval of a company's Development Plan (DP) may cause the APC to make a trip to a courtroom.

Representatives of Liberty Green Renewables L.L.C. and their attorney, John Kraft of New Albany, attended the October 14 APC meeting. Larry Ott and Terrance Naulty had come to be available should any member of the APC have questions about the company. Members of a local citizens' group fighting Liberty Green were also present. Three of them, Jeff Cox, Pat Berna and Alice Stackhouse, were allowed to provide comments about their data on emissions they said such plants create.

That group was not successful in preventing the APC from approving Liberty Green's DP on August 26. In that presentation, the APC was told how the company plans to burn wood chips that will generate steam which will power a turbine that will create electricity. The process is considered better for the environment because its fuel, trees, are considered a renewable fuel as opposed to coal, the "black gold" on which the Midwest depends for generating much of its electrical power.

According to its plan, Liberty Green will build its plant on some 45-plus acres located along U.S. Highway 31 South. The currently vacant property is owned by the City of Scottsburg and was already zoned industrial. It lies just south of two small, failed companies and is north of the city's newest water storage tower. To its west, the property is bordered by Interstate 65.

The APC's current Zoning Ordinance sets standards for Development Plans. In that August 26 meeting, commission members agreed 4-1 to approve Liberty Green's DP; however, they added two restrictions. They required Liberty Green to only burn "clean" fuel. They also wanted a measuring device placed in the plant's smokestack that would measure the sorts of emissions of which the citizens' group has been arguing against.

Unfortunately, the first restriction could be interpreted to mean that the APC was claiming to have the knowledge of what constitutes a "clean" fuel. The second restriction may be beyond the power of the APC to require; nothing in its Zoning Ordinance may not give the APC the right to require such a device. The Indiana Department of Environmental Management (IDEM) does have that power, and IDEM will be the next agency to look at Liberty Green's plans and determine if it can be allowed the proper permits to operate.

A tort notice has already been served on the APC, advising that Liberty Green may sue the APC to have the restrictions removed within the next few months. Receipt of that notice apparently generated a reworded restriction listing what fuels are considered "clean." It also specifies emissions monitoring and reporting provisions for the equipment "...consistent with the air (quality) permit issued by IDEM." APC attorney Mike Carter, who was unable to be present for the APC meeting, submitted the reworded restrictions. He also encouraged the APC to approve them.

That didn't happen.

After the reworded restrictions were submitted, the APC went into a planned executive session to discuss them.

Coming back into public session, members of the APC discussed among themselves the restrictions' changes. David Kilburn, who represents the City of Scottsburg on the APC, observed, "We could talk all day and all night, and we can't change things (on a local level). Your group," he told the citizens, "really needs to appear before IDEM when it has its hearing (on issuing permits)."

Don Wilkerson made the motion to amend the restrictions as presented. After a decided

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pause, Jim Boswell seconded the motion.

Ed Cozart, who was recently appointed by Scott County Commissioners to replace the late John McDonald on the APC, told the group he had to abstain. "This is my first meeting. I don't feel I know enough to vote on this issue," he reasoned.

Cozart apparently started a trend among members. Jim Craig also abstained, saying he wanted more time to consider the changes. "I don't like voting on something like this right away. I'd rather wait a couple of weeks to let the public become informed," he said.

Dale Hobbs, the APC chairman, also abstained, but he offered to make a motion for Liberty Green representatives to set a special meeting in a couple of weeks at which the vote could be taken. Liberty Green is on a tight schedule, it was acknowledged, and thus needed a decision earlier than the APC's next scheduled meeting on November 18.

In the vote that was taken on the original motion to accept the changes, only three – Wilkerson, Kilburn and Boswell – voted in favor, not enough to allow its passage. Kilburn then left the meeting because of a prior commitment.

Hobbs offered a motion to table the issue until the November 18 meeting. Craig seconded it, saying he hoped that Liberty Green would accept this gesture "...as a good neighbor and not threaten litigation before the next meeting."

Kraft, speaking for his clients, told the remaining APC members, "Time constraints cannot allow us to wait (until November 18). Statutory deadlines will not be met. It's not a matter of trying to be or not to be a good neighbor."

Craig told the attorney and the two Liberty Green representatives, "We appreciate your remarks, but there just seems to be so many questions. We'd just like a little time." Kraft replied, "We understand that, but we want to make this clear to you that we're not doing this to be bad neighbors. The legal deadlines we must meet will end before the next meeting occurs."

In the end, the motion to table also did not pass, thus leaving the original restrictions intact and Liberty Green representatives disgruntled.