

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
January 26, 2005**

The Planning and Zoning Committee of the DeKalb County Board met on January 26, 2005 at 7:00 p.m. in the Gathertorium of the DeKalb County Legislative Building. In attendance were Committee Members Roger Steimel, Howard Lyle, Marlene Allen, Eileen Dubin, Vince Faivre, Steve Slack, and staff members Paul Miller and Cky Ready. Committee member Patricia Vary was absent. Audience members included: Lee Ann James, Robert Mullins, Larry Hein, Donna Bunton, Pastor James Freund, Steve Dooneu, Michael Larson, Vince Volpe, Geri Volpe, Bill Hall, Harlan Scott, Linda Swenson, Susan Allen, Nedra Ericson, Janet Johnson, and Matt Schmitt.

Mr. Steimel, Chairman of the Planning and Zoning Committee, called the meeting to order, and called for a role call to identify the Committee members for the public. Mr. Steimel introduced and welcomed Cky Ready, new staff member. He also noted that all Committee members were present except for Patricia Vary.

APPROVAL OF MINUTES

Mrs. Dubin moved to approve the minutes for the November 22, 2004 meeting of the Planning and Zoning Committee, seconded by Mr. Lyle, and the motion carried unanimously.

APPROVAL OF AGENDA

Mrs. Allen moved to approve the agenda, seconded by Mr. Slack, and the motion carried unanimously.

SPECIAL USE PERMIT – Request of Mullins Grain for approval of a grain elevator “agribusiness” on property located on the west side of N. Shabbona Road in Shabbona Township, Petition SH-04-31

Mr. Miller stated that Mullins Grain Company has filed a petition for a commercial grain operation immediately north of the Village of Shabbona limits, on the west side of the road. The property is zoned A-1, Agricultural District. The site was a private grain bin operation for many year, but became a commercial grain bin operation two years ago. In the A-1, Agricultural District, a commercial grain operation requires a Special Use Permit. The required public hearing was held on November 18, 2004 by Hearing Officer Ron Klein. Several surrounding property owners attended the hearing, and much of the discussion focused on stormwater and drainage problems in the general area. There was discussion about the 25-acre watershed and the surface flow that goes across the farm fields associated with this grain bin operation and how it impacts houses to the south. The Village Engineer with the Village of Shabbona testified at the hearing as to the necessary changes that would have to be put in place in order to correct this problem. The Hearing Officer recommended approval of the Special Use with two conditions of approval: one is that at such time as the Village of Shabbona provides an outlet at the property line of the subject property, the Mullins Grain Company shall tile the 25-acre watershed area at their own expense and connect to that outlet; secondly, there shall be no further additions, in the form of new structures or grain bins, on this property until the first condition is met.

Mr. Slack mentioned the Village of Shabbona’s shortage of money needed to extend a stormwater outlet to the subject property. He inquired as to whether the P&Z Committee was voting to approve this on the condition that the Village of Shabbona provide that extension? Mr. Miller clarified that the Hearing Officer’s recommendation is that if sometime in the future the Village of Shabbona does provide that extension, this petitioner would be required to connect to it and do their part. It is the Hearing Officers position that Mullins Grains should not be responsible for fixing this entire problem. Mr Slack agreed that it was Mullins Grain’s responsibility to provide the watershed tiling. His concern was if the board approved the Special Use, before the outlet was available that the board would be exacerbating the problem for the residents of the area. He referred to some photographs of the flooding in Shabbona in 1996, and added that it is unfortunate that the Village of Shabbona could not afford the project. He suggested that perhaps the County could offer a low interest loan to help the Village of Shabbona with this project.

Mrs. Dubin asked if Shabbona had asked for a loan. Mr. Miller stated that as far as he knew it had not asked for such a loan.

Mr. Steimel acknowledged that the flooding in the years 1996 and 1997 were County-wide, and a judgment made based on the photographs would have to take that fact into consideration.

Mr. Slack mentioned the number of neighbors who had attended the public hearing and testified that flooding had in fact increased since the photographs were taken. Mr. Slack stated that he did not think the increased flooding was a result of anything done to the subject property.

Mr. Faivre stated that this was an agricultural use and that Mullins Grain has served the community well. He agreed with the conditions that the Hearing Officer suggested. Mr. Faivre stated that they should be allowed to continue the business as long as they agree to hook up to the Village drainage system at such a time that it is available to them.

Mr. Faivre moved to approve the Special Use Permit, including the conditions recommended by the Hearing Officer, seconded by Mr. Lyle. The motion carried with five "yes" and Mr. Slack voting "no."

TEMPORARY SIGN -- Request of Our Savior's Lutheran Church in Sandwich Township for extension of time limit for a temporary sign.

Mr. Miller began by pointing out that this is an unusual request as it concerns the sign regulations of the Zoning Ordinance. Normally, signage in unincorporated DeKalb County is purely an administrative function carried out by staff. However, there are exceptions to this when it comes to temporary signage. The Zoning Ordinance allows a temporary sign on a piece of property for a period of up to 30 days. It also states that temporary signage that remains posted on the property for any period longer than 30 days requires approval by the Planning & Zoning Committee.

Our Savior Lutheran Church is currently under construction at the northwest corner of East Sandwich and Pratt Road in Sandwich Township, and has had a temporary sign on the property that reads, "Future Home of Our Savior's Lutheran Church". The Church had the sign posted until the end of January 2005. It now requests that the temporary signage be permitted on the property until a permanent sign is installed in August of 2005. Mr. Miller noted that, in the past, staff has interpreted that the sign announcing future home of the Church is substantially similar to the types of special displays that the temporary sign regulation is intended to cover. He stated that it is important for staff to point out to the Committee that the temporary sign regulations are intended to assure that such signs are not in place for long periods of time. This helps avoid visual clutter which is out of character in rural DeKalb County. Staff is concerned that granting this extension for an unspecified amount of time will render the word "temporary" moot. Another issue is the precedent that granting this extension could have. Mr. Miller suggested that, if the Committee grants the extension, it would mean that any special use may have such a "coming soon" sign, and that such signs could remain in place until such time as a permanent sign is installed. Temporary signs installed at the beginning of a construction project could potentially remain in place for two years or more.

Bill Hall, representing Our Savior's Lutheran Church, reviewed some of the difficulties the Church has had in its construction project. He stated that the completion date has now been pushed back to September 2005. Mr. Hall expressed hope that a reasonable accommodation could be reached so all concerned parties would be satisfied.

Mr. Slack inquired as to where the congregation was currently meeting. Mr. Hall responded the Church currently meets in two locations.

A discussion ensued as to a time limit if the motion were granted. A six month time line was suggested, and Mr. Hall agreed that period would be acceptable to the Church.

Mr. Slack moved to grant the extension for the temporary sign for a period of six months, to the end of July, 2005, seconded by Mrs. Dubin. The motion carried unanimously.

At this time a Public Hearing on the matter of Mediacom Cable Franchise was opened.

PUBLIC HEARING: CABLE FRANCHISE -- Request of Mediacom Illinois for renewal of two cable television franchises.

Mr. Steimel asked all persons planning to give testimony raise their right hands and be sworn in.

Mr. Miller indicated that Mediacom has two cable franchises in unincorporated DeKalb County. One covers portions of the county from south the City of Sycamore, east of the City of DeKalb and surround the Town of Cortland going east to the county line. That franchise was originally granted to Oak Cable Systems on June 21, 1989. In September of 1993, the County Board passed an ordinance which transferred ownership from Oak Cable to Mid American Cable. On March 15, 2000, Mid American sold the franchise to Mediacom. That franchise term was for a period of 15 years and that time limit expired on June 21, 2004. The second franchise covers portions of unincorporated DeKalb County near Shabbona (Indian Oak Estates), Somonauk (Buck Lake Estates) and Malta (Trade Winds and Donny Brook Estates). This franchise was originally granted to Triax Midwest Associates, on September 21, 1988 by the County Board. Triax subsequently sold the franchise to Mediacom with County Board approval on July 21, 1999. The original term of this franchise was also 15 years, and it expired on September 21, 2003.

The County received a letter dated December 15, 2001 informing the County of Mediacom's intent to renew the cable television franchises. Mediacom also seeks to combine the two franchises under a single franchise agreement. Section III of both original Ordinances granting the franchises allow that the franchises may be renewed for such term (period of years) as the County shall determine, following a public hearing. Mediacom has forwarded a draft of a new Franchise Agreement, which has been reviewed and approved by the State's Attorney's office, and asks that the renewed franchise be granted for 15 years.

Lee Anne James, representing Mediacom, stated that the reason Mediacom was seeking to combine the two franchises is because it will make the paperwork less cumbersome. She stated that since Mediacom purchased the two franchises, there have been substantial improvements to the systems. Mediacom now can offer high-speed internet service, digital cable television service to some of the smaller areas in the County that other cable companies seemed to have forgotten about. This is a non-exclusive agreement and the State of Illinois requires that a franchise agreement to continue providing service. The non-exclusive agreement basically states that anytime another competitor comes in and wants to provide service that they have every right to do so, just not under more favorable circumstances. More favorable circumstances such as granting a competitor a 100 year franchise agreement. Future expansions Mediacom plans to offer are high-definition television, telephone service through cable lines (telephony), and Video On-Demand service. Video On-Demand is a library of movies that can be rented using your remote, with all the functionality of a VCR (stop, rewind, fast-forward and pause).

Mr. Steimel asked if the new agreement would be for 15 years. Ms. James reiterated that it would be for that term.

Mr. Steimel asked if Mediacom had plans to expand (outside of Cortland) into unincorporated DeKalb County. Ms. James stated that Mediacom already provides service to the unincorporated areas of the County. Mr. Miller added that any expansion in the unincorporated area would require an amendment to the agreements. These franchise agreements only cover existing areas and do not include any expansion. Ms. James stated that Mediacom is not looking to expand, only to continue to provide service to existing customers.

Mr. Slack asked if Mediacom provided local programming. Ms. James discussed the equipment that Mediacom provides to local communities to advertise local events.

Mrs. Dubin inquired about public access. Ms. James explained how time intensive public access television is, and that Mediacom is willing to air public access programs that are submitted to them.

At this time the Public Hearing for Mediacom Franchise Agreement was closed and the Planning and Zoning Committee proceeded to discussion on the request.

Mr. Lyle moved to approve the request for renewal of two cable television franchises under a new franchise agreement for Mediacom, for a period of 15 years, seconded by Mrs. Allen. The motion carried unanimously.

SPECIAL USE PERMIT -- Request of Foursquare Gospel Church for extension of deadline to commence construction of a church, Petition GE-02-31

Mr. Miller explained that on February 19, 2003, the County Board passed Ordinance 2003-4, which granted a Special Use Permit to the International Church of the Foursquare Gospel on property located on the south side of Cherry Road and east of Southwood Subdivision in Genoa Township. Section 9.01.B.8. of the County Zoning Ordinance requires that substantial construction shall commence within one year of the effective date of the permit, after which time the Permit shall terminate. However, the regulation allows that the time period may be extended through appeal to and approval by the Committee. At its meeting of January 28, 2004, the Planning and Regulations (now Planning and Zoning) Committee approved an extension for Foursquare Gospel Church for a one-year period. That extension granted the Church until February 19, 2004 to commence operations or construction of the Special Use Permit. At this time construction has not began on the site. Attorney Robert Becker, representing the Foursquare Gospel Church, submitted a letter, dated January 12, 2005 requesting another extension of the deadline to begin substantial construction on the church site.

Mr. Lyle discussed how conflicts and problems come up in the construction process and that he saw no reason not to grant Foursquare Gospel Church another extension for another year.

Mr. Steimel commented that the Planning and Zoning Committee wanted to help the Church if at all possible.

Mr. Lyle moved to grant the extension, seconded by Mrs. Dubin. The motion carried unanimously.

ZONING TEXT AMENDMENTS -- Request of DeKalb County for Zoning Ordinance update Text Amendments, Petition DC-04-32

Mr. Miller began by reminding the Committee that the County Board is looking at a large number of potential changes to the Zoning Ordinance, which were the subject of a public hearing that was held by Hearing Officer Ron Klein on December 16, 2004. The Hearing Officer's report recommends approval of the changes, but expresses reservations over the proposal to rezone all non-agricultural properties to the A-1 District, and "grandfather" those uses and properties. Mr. Miller stated that this was the one proposal that received the most attention and concern. Some individuals and organizations expressed concerns to the effect that if properties are zoned agricultural and are rendered legal, nonconforming, it could cause problems and delays when those properties go for sale or refinancing because lending institutions may be alarmed by the nonconforming status.

Mr. Miller explained that some of the County Board members inquired if an alternative could be generated that would not result in properties being made nonconforming. In response, Mr. Miller stated that staff worked with zoning experts and the State's Attorney's Office to come up with a proposal that would not involve the elimination of those zoning districts. Rather, the R-1, R-2, B-1, M-1 would be to retitle them as "conservation" districts; "Residential Conservation-1", "Residential Conservation-2", "Business Conservation-1" and "Manufacturing Conservation-1." The purpose and intent portion of these districts would be rewritten to make it clear that the districts were for the preservation of existing buildings and lots, rather than for the construction of new non-agricultural buildings. These zoning designations would apply only to properties already so zoned, and would not be an option for properties now zoned A-1, Agricultural District. All new growth and development would be only through the County's planned development

regulations, which would give the County Board more control over the conditions under which development is appropriate.

Mr. Miller added that properties now zoned Planned Development would not have any changes to regulations. He stated that staff first had to verify that this proposal was legal under enabling legislation for counties, and it was determined that it is. He noted that the City of Elgin has three residential conservation zoning districts, for neighborhoods that have very small lot sizes. The City wanted to protect these neighborhoods but did not want to see any more of this type of development occur.

Mr. Miller introduced draft language to the Committee and stated that this alternative will accomplish the same result as the previous alternative, but no properties would be made nonconforming under this proposal. This proposal will protect the existing non-agricultural properties, whether they are developed or not, but not allow more of the same, which is what the Unified Comprehensive Plan strongly encourages.

Mr. Miller also added as a minor addendum a concern raised by a group of property owners north of Kingston. The issue concerns farm animals, with the previous proposal if everything was zoned agricultural, lots two acres or more in size can have farm animals, without restrictions. If this proposal is adopted that would not be the case because residential districts do not allow farm animals. The request is for the Committee also to consider whether or not lots of two acres or more in size should be allowed to have farm animals, without restrictions, regardless of zoning. Such a regulation could be added to the Supplemental District regulations.

Mr. Miller concluded by recommending that, if the Committee is inclined to endorse this alternative, staff recommends reopening the public hearing. He suggested February 24, 2005, and stated that the re-opened hearing could be at night. Staff would publish a new public notice, specifying that the re-opened hearing would be to focus on the new proposal. Staff would also directly contact the the same organizations and individuals that were contacted to announce the open houses that were held in early December, 2004, including the Farm Bureau, the DeKalb County builders association, the Realtors association, and the Economic Development Corporation. Relying on these organizations proved an effective means of getting the word out to the public at large and inviting input.

Mr. Steimel asked if the properties currently zoned R-1, R-2, B-1 and M-1 would still maintain the same rights and privileges if they were moved into the new "conservation" districts. Mr. Miller stated that this is correct and that they would not have to worry about looking at the rules regarding nonconformities, to the extent that they are conforming now. He noted that hundreds and hundreds of properties are currently nonconforming with respect to one or two elements of the Zoning Ordinance, but nothing would be changed to nonconforming as a result of this proposal.

Mr. Steimel inquired if the proposal would apply to land that is not developed. Mr. Miller answered that, under this change, the only development options in unincorporated DeKalb County would be the Planned Development regulations, because there would not be the straight R-1 to allow the construction of new houses. The "residential conservation" district would specifically say that it only applies to the properties so zoned as of this date, and shall not be applied to other properties. However, this would not preclude the possibility that in an area that a community has designated for growth, where the village cannot annex the property because it is not contiguous but where the village wants to see the development and the county agrees, that could happen through the planned development process. Properties already zoned planned development but not currently developed would have largely the same review and approval process. Staff conducted a study and found DeKalb County has about 1,200 properties zoned Planned Development - Residential, Planned Development -Commercial or Mixed Use Development. The regulations that apply to these properties would remain unchanged.

Mr. Lyle stated that since the open house meeting in Genoa, a number of citizens had contacted him and asked him not to vote for this change. He added that if this hearing is re-opened, he would be in favor of the meeting being at night.

Mr. Slack stated that it was his understanding of the primary problem that most people had with the original idea of rezoning everything to agricultural was that once these mortgages leave the local lender and move into the secondary market, anything that is not identified as something conventional, R-1 or R-2, would raise a flag that there might be a problem. He stated that changing the terminology from legal non-conforming to "residential conservation" may not eliminate that concern. Mr. Miller responded that there is no way to guarantee that any particular lender might not add a strange requirement at a closing. However, he added that he did not feel that residential conservation is that unusual or unconventional.

Mr. Slack asked if it would be recognized in the secondary market. Mr. Miller explained that when an appraiser fills out a zoning report, as part of his appraisal, the appraiser identifies the zoning. The only way that legal non-conforming comes up is if it is in fact legal nonconforming, and then the question is can it be rebuilt. If a property is not nonconforming in the first place, it is a non-issue. He repeated that nothing would be made legal nonconforming as a result of this new proposal.

Mr. Steimel stated that it was the desire of the County to adopt a Zoning Ordinance that aligns with the Unified Comprehensive Plan, which has been in effect for over a year and reflects the desires of the County Board. He added that, after recent County Board elections, it is clear that all of the Board members are very supportive of the Comprehensive Plan. Preservation of farmland is a priority for the County Board and this proposal was drafted in regard to that desire. It is the desire of the County for development to take place within and adjacent to existing towns, and this effort is an attempt to align the Zoning Ordinance with that approach. He indicated that he is in favor of an approach that helps the County Board manage growth without making properties nonconforming.

Mrs. Dubin agreed that is what the County Board wants to do, but that there must be certainty that there will not be harm to property owners.

Mr. Steimel indicated that he had received a letter from Ken Anderson, Vice President of DeKalb County Realtors and Development Association, and that it is their wish that the County not move forward with the proposal that was presented at the open houses. Mr. Steimel stated that he believed that is what the Committee is doing by exploring this alternative proposal.

Mr. Faivre stated that he was in favor of staff's proposal to turn this back over to the Hearing Officer for a re-opened public hearing, and to move ahead with the recommended dates presented by staff.

Mr. Faivre moved to accept the proposal, seconded by Mrs. Allen. The motion carried unanimously.
At this time Mr. Steimel asked if there were any comments or questions from the audience.

Ms. Bunton asked where to find the proposed draft regulations, and inquired if property owners were going to be under stricter regulations as a result of being zoned conservation. Mr. Miller responded that the proposal would be posted on the County website. He explained that the word "conservation" in this case has nothing to do with ecological conservation laws, but rather refers to preserving properties zoned residential for residential use.

An unidentified audience member asked if there were a way to notify each property owner that would be effected by the proposed changes. Mr. Steimel indicated that this was going to effect a sizable number of properties. Mr. Miller stated that the notification issue is one that is brought up each time the County looks at a comprehensive zoning change. State law has established that jurisdictions cannot notify every property owner that will potentially be affected, and in fact only requires that the County publish a public notice in a newspaper in general circulation. However, the County always does more than the minimum when it comes to notification. The notice would be sent both to The Daily Chronicle and The Midweek, and reporters for each would be contacted and encouraged to run a story on the possible change and the re-opened hearing. Staff also contacts other groups that reach out to other individuals, like the Farm Bureau and the Builders Association. Staff does what it can, but it is a matter of practicality and resources that prohibit being able to reach every single property owner.

Mr. Steimel asked if staff intended to contact the same organizations that were contacted about the previous proposal. Mr. Miller responded that staff would contact the same organizations previously contacted.

Mr. Slack stated that he asked the Information Services Department to compile a list of every property that is in his district. He stated that there are 300 or 400 parcels, and he was able to get all of the addresses. Could the County not do so for all properties that would be affected? Mr. Miller stated that it is a matter of expense and policy. Mr. Slack asked if it would be outside the bounds in this particular instance we send those individual home owners a notice. Mr. Miller replied that it would be unusual, and that the problem would be one of cost. There is no budget for such a mass mailing. Discussion was held regarding the number of parcels and the costs of individual notification.

Mr. Faivre stated that he understood the concerns of the people wanting to do notification, but added that the County is not trying to do anything and sweep it under the rug. The process is being conducted in a very open manner. He stated that the County already does more than is required in getting the word out, and he noted that there is a certain amount of responsibility that falls upon the people to get the information for themselves.

Mrs. Dubin suggested that if the County does so much more in the way of notification for this proposal, it will set a precedent for the next issue that comes up.

Mr. Steimel pointed out that no matter how much notification we provide, there will be someone who will be missed. Mr. Steimel agreed with Mr. Faivre, that the task of notifying everyone who might be affected by this change was impossible. He suggested following standard notification practices.

YEAR-END REPORT -- Review of Planning, Zoning and Building Department FY 04 activities

Mr. Miller explained that the Committee had copies of the Year End Report for 2004 on the activities of the Planning, Zoning and Building Department. No Committee members had questions on the report.

ADJOURNMENT - *Motion to adjourn by Mr. Lyle, seconded by Mrs. Allen, and the motion carried unanimously.*

Respectfully submitted,

Roger Steimel, Chairman
Planning and Regulations Committee Chairman