

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
April 26, 2006**

The Planning and Zoning Committee of the DeKalb County Board met on April 26, 2006 at 7:00 p.m. in the Conference Room East located in the DeKalb County Administration Building. In attendance were Committee Members Roger Steimel, Marlene Allen, Patricia Vary, Vince Faivre, Eileen Dubin, Howard Lyle and Steve Slack and staff member Paul Miller. Audience members included Greg Millburg, Lee Addleman, Dale Hoekstra, Tammie Ring, Judy and Leonard Baumgartner, Richard Schmack, Steve Diedrich, Janet Hartwig, Terry Michaels and David Orrick.

Mr. Steimel, Committee Chairman, called the meeting to order, and noted that all Committee members were present.

APPROVAL OF MINUTES

Ms. Vary moved to approve the minutes of the March 22, 2006 meeting of the Planning and Zoning Committee, seconded by Mrs. Dubin, and the motion carried unanimously.

APPROVAL OF AGENDA

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

USE VARIATION -- Request of Leonard and Judith Baumgartner for approval to build a house on a vacant one-acre property located on the west side of East County Line Road in Cortland Township, Petition CO-06-02.

Mr. Miller began by explaining that the Committee had tabled action on this petition at its March 22, 2006 meeting until tonight. By way of review, he stated that Leonard and Judith Baumgartner, the property owners, have filed a petition for a Use Variance for a vacant one acre parcel located on the west side of East County Line Road, approximately 2,000 feet south of Barber Greene Road, in Cortland Township. The petition is to allow the construction of one single-family detached dwelling on an agriculturally-zoned parcel of less than 40 acres in size. The subject property is zoned A-1, Agricultural District. A public hearing on the requested Use Variance was held by DeKalb County Hearing Officer Kevin Buick on March 2, 2006.

Mr. Miller stated that the primary issue related to this request concerned whether a "premium price" had been paid for the lot by the petitioners, since the lot was given to them, along with another lot, by Mr. Baumgartner's mother. The petitioners maintain that the lots were given as compensation for their 10 years worth of labor on the farm, and that the labor constituted the payment of a premium price. Staff recommended denial of the request, on the basis that the required criteria is that a premium price be paid, and there was no evidence of a financial hardship associated with the request. The Hearing Officer has reviewed the criteria for granting a Use Variation and recommended denial based on failure to meet the specific particular hardship requirement for Use Variations. The Planning and Zoning Committee is requested to forward an ordinance for approval

to the full County Board, and may recommend approval, conditional approval or denial of the proposal.

Mr. Steimel stated that he was not at the last P&Z Committee meeting, but that he had read the minutes of the meeting as well as the staff report and Hearing Officer's report several times. He also stated that he was visited the property. Mr. Steimel said that this is an emotional issue for the petitioners and that, while he has sympathy for their position on the one hand, on the other hand is the County ordinance and criteria. He noted that the regulations ultimately are about protecting the 40-acre rule, and making a decision to allow a house on less acreage is not done lightly. He noted that there was no evidence supplied by the petitioners to the effect that the two lots were anything other than a gift. The lot in question has value as farm land and is in row crop production. He opined that it would be a stretch to find this petition meets the criteria for granting a Use Variation.

Mrs. Dubin acknowledged that she also was not at the last meeting but, having reviewed the material, understands why there was so much discussion about it. She stated that it is a difficult decision, but the petition does not appear to meet the criteria. She said that the County Board wants to be fair and compassionate in its decision.

Ms. Vary agreed that no one on the Committee takes the issue lightly. She said that the petitioners had not demonstrated that the two lots were received as a *quid pro quo* for their labor on the farm. She noted that the purpose of the 40-acre rule in the agricultural district is to preserve farm land. It does this in part by discouraging the clustering of houses in the rural area, where they are too far from public services. Ms. Vary stated that this petition does not meet all of the criteria for granting a Use Variation, and she expressed concern for the precedent that would be set if this is approved, and the danger such a precedent would create for maintaining the 40-acre rule.

Mr. Faivre stated that he agreed with Ms. Vary. He noted that since this issue came before the Committee in March, he had been contacted by the owner of a property that is illegal, nonconforming, who opined to Mr. Faivre that the Baumgartner situation could justify approval of his own situation. Mr. Faivre said that this shows that if the County Board approves this petition, it will set a precedent that others will rely on for arguing for more houses on less than 40 acres of land. He stated that the County needs to be consistent in the interpretation and application of its rules.

Mr. Slack expressed respect for the opinions of the others on the Committee, but felt that the petition should be approved. He noted that the property owner that had contacted Mr. Faivre had an entirely different situation, and so the Baumgartner decision would not set a precedent for that person. He stated that what is most important in this request is whether or not the labor by the petitioners on the farm has value equal to cash. Had cash changed hands, there would be no question of approving the petition. Since no cash was involved, does labor constitute a premium price? He indicated that the evidence of value for their labor is in the form of the deed conveying the property to the Baumgartner's in 1969. The County need only agree that their labor has value, that hard work on a farm constitutes paying a premium price. He indicated that, at labor rates from the years they

worked, they did at least \$23,000 worth of work on the farm, which, when applied to the two lots, exceeds the market value for one acre of farmland at the time. He noted that at the time they acquired the lots, they could not have envisioned that in the future the County government would determine that the payment for their hard work, in the form of two buildable lots, should be voided.

Mr. Steimel indicated that there is no evidence that the petitioners were given the lots as compensation for their labor, that there would have been no labor without the compensation. Just as a court of law requires evidence, so too the County must rely on evidence.

Mr. Slack responded that the County did not consider labor as a premium price paid when it crafted the Use Variation criteria, but to deny the petition would be to say that it does not count. He indicated that the point of the land use regulations applicable to the agricultural areas is to stop the residential subdivisions, not to stop family farmers from being able to build a modest-sized house for their children. The County should consider changing the ordinance to allow that labor may count as premium price paid.

Ms. Vary asked how the County could set a value on labor? How would the value be determined, and how much would one have to work? She noted that the subject property was given as a gift to the petitioners. One option remaining to them is to acquire an additional 39 acres to create a buildable 40-acre lot.

After further discussion, Mr. Faivre moved to deny the Use Variation petition, seconded by Mr. Lyle, and the motion carried with five "yes" (Faivre, Lyle, Steimel, Dubin and Vary) and two "no" votes (Slack and Allen).

SPECIAL USE PERMIT -- Request of Steve and Lori Diedrich for approval of an RV storage business on property located at 16133 S. First Street in Afton Township, Petition AF-06-04

Mr. Miller introduced the petition by explaining that Steve and Lori Diedrich, the property owners, have filed a petition for approval of a Special Use Permit to allow the continued operation of an RV and vehicle storage business on property located at 16133 South First Street in Afton Township. The 7.18-acre subject property is located on the west side of S. First, approximately 760 feet north of the intersection with Elva Road, and is zoned A-1, Agricultural. Mr. Miller further explained that the petitioners currently operate a recreational vehicle (RV) and auto storage business within and around three accessory buildings on the property that were previously used for agricultural purposes. The business is currently illegal, nonconforming with respect to the County zoning regulations, as no zoning approval for the business has been granted. He noted that the A-1, Agricultural District regulations include a category of Special Use that creates the possibility of, "retail and service uses conducted within and immediately adjacent to existing agricultural structures that are no longer used for agricultural purposes, provided such uses are clearly compatible with and subordinate to agricultural uses in the surrounding area, and further provided such uses have the effect of preserving the agricultural buildings in and around which they are conducted." The principle

motivation for allowing such uses is the consequence of preserving the former agricultural buildings, rather than allowing such to fall into disrepair. The petitioners' application indicates approval of the Special Use Permit would make it easier to maintain the buildings. Mr. Miller stated that the property is kept in good repair, as noted by the Hearing Officer at the public hearing held on March 23, 2006 by Hearing Officer Ron Klein. No members of the public spoke in favor of or in opposition to the petition. Mr. Miller stated that the only contentious issue related to the storage of RVs outside, because changes to Federal law would require an annual license for pollution discharge if any vehicles are stored out of doors. In order to avoid that administrative burden, it was recommended that no outside storage be permitted, and the petitioner agreed to the is condition. The Committee is requested to forward this item to the full County Board, and can recommend approval, approval with conditions, or denial of the request.

Ms. Vary noted that she had visited the property and that it is well-maintained. She stated that the proposal appears to be a good use for the site.

Ms. Vary moved to approve the Special Use Permit with conditions, seconded by Mr. Faivre, and the motion carried unanimously.

SPECIAL USE PERMIT -- Request of Terry Michaels, representing Tower Sites Inc., for approval of use of a telecommunications and relay tower at 14792 Tower Road in Milan Township, Petition MI-06-05

Mr. Miller introduced the petition by explaining that Terry Michaels, representing Tower Sites, Inc., the property owner, has filed a petition for a Special Use Permit. The request is to permit the former AT&T microwave tower at 14792 Tower Road, approximately 1,250 feet south of Perry Road, in Milan Township to be used as a communications relay tower and antenna. The subject property is zoned A-1, Agricultural District. He further explained that the subject property, for which Tower Road was named, has been used as a telecommunication tower dating back to the 1950's. However, the use was discontinued for a period of more than one year, and the County regulations mandate that when a Special Use ceases for a year or more, it expires. The petitioner acquired the property in 2002, and leases out the towers to a number of users, including an antenna for the County Sheriff's Department. In order to bring the use into line with zoning regulations, a new Special Use Permit must be granted. Mr. Miller stated that approval will also allow the petitioner to make improvements to the site, including the installation of security fencing.

The required public hearing was held on March 30, 2006 by County Hearing Officer Kevin Buick. Only one member of the public spoke at the hearing and was in favor of the petition. The Hearing Officer has recommended approval of the use with conditions. The Committee is requested to forward the item to the full County Board, and may recommend approval, approval with conditions, or denial of the request.

Mr. Steimel stated that he was glad to see that some use for the existing towers could be found.

Ms. Vary asked why the use was in place for four years before application was made for a Special Use Permit. Mr. Miller responded that the petitioner was unaware of the need for the Permit. Ms.

Vary then noted that the site could merit a plaque as a historic place. Finally, she inquired whether the existing 400-foot-tall steel tower is allowed, given that County regulations allow a maximum of 300 feet. Mr. Miller replied that, if approved, the existing tower would be grandfathered.

Mr. Faivre made a motion to approve the Special Use Permit with conditions, seconded by Mr. Lyle, and the motion carried unanimously.

USE VARIATIONS -- Request of Robert P. Reck for approval to build one house on each of three vacant 10-acre parcels located on the west side of Graham Road in Victor Township, Petition VI-06-06

Mr. Miller introduced the petition by explaining that Robert P. Reck, the owner of three separate, vacant, ten-acre parcels, has filed petitions for a Use Variance for each parcel. The subject properties are located on the west side of Graham Road, approximately 945 feet north of Pine Road, in Victor Township. The petitions are to allow the construction of one single-family detached dwelling on each property. The subject properties are zoned A-1, Agricultural District. Mr. Miller pointed out that, although there is only one application, it is in fact for three separate Use Variations.

He explained that the subject properties were part of a division of an 80-acre farm that took place in the early 1970's. Several of the resultant lots have been developed with single-family residences. The required public hearing on this request was held by County Hearing Officer Kevin Buick on March 30, 2006. One member of the public spoke in favor of the request. As with the previous petition for Use Variation, the primary issue on this request related to whether or not a premium price had been paid for the lots. Mr. Miller noted that the first 10-acre parcel had been purchased for only \$1,000 per acre, and the second for \$2,300 per acre. It was questioned whether or not this was more than an average acre of farm land was going for at the time. The third lot was purchased for \$5,300 per acre. The petitioner's attorney noted that the properties were marginal for agriculture due to their rocky soils, and an effort to sell the entire 80-acre farm to the neighbor in 1969 had been rejected. The petitioner also argued that it was difficult to find comparable ground to determine whether a premium price was paid. Mr. Miller stated that the Committee was requested to forward this request for three Use Variations for action by the County Board, and could recommend approval, approval with conditions, or denial.

Ms. Vary stated that she was torn on this petition too. She noted that the properties were divided long ago, and that the Hearing Officer was recommending approval in part because of the houses on the other parcels that were once part of the original farm. However, two things bothered her: one was the argument that there should not be intense agriculture next to houses. This would mean that agriculture would be replaced by more houses everywhere a farm touches a subdivision; the other issues related to the fact that there are other uses permitted in the A-1 District to which these parcels could be placed. Houses are not the only option.

Mr. Faivre stated that, just as he believed the County should abide by the criteria for approving a Use Variation in the Baumgartner case, so it should in this case. Here, the petitioner has proven that the criteria for approval are met. The County should approve the Use Variations.

Ms. Vary added that she had reviewed the prices paid for the lots and considered the taxes paid by

the property owner over the years in trying to determine whether a reasonable return had been realized. However, she would vote for approval if the Committee was so inclined.

Mr. Faivre made a motion to approve each of the three Use Variations, with the condition on the northernmost that no structure be constructed within 100 feet of the existing drainage ditch. The motion was seconded by Mrs. Dubin, and carried with a vote of six "yes" and one "no" (Allen).

LANDFILL ANNUAL REVIEW -- Presentation by Waste Management West on the operation of the DeKalb County Landfill in 2005.

Dale Hoekstra of Waste Management Inc. presented an aerial photograph of the DeKalb County landfill and reviewed the operation during 2005. Among the highlights of the presentation was that the landfill took in 84,000 tons of waste, down from 88,000 tons in 2004. Of this, 4,300 tons were out-of-county, which is only 5%. The restriction from the County allows up to 10% of the total waste to be out-of-county. Right now, the landfill is receiving about 303 tons a day. Composting on the property continues to work well. In response to a question from Mr. Slack, Mr. Hoekstra explained that a groundwater remediation project is underway for the old, unlined portion of the landfill in the form of poplar trees which were planted to soak up contaminated ground water before it enters Union Ditch. The project is half-way through a 10-year monitoring program. He confirmed that if groundwater is found to be contaminated due to this old portion of the landfill, created before Waste Management purchased it, it would be Waste Management's responsibility to clean up the problem. This responsibility extends for 30 years past the date the landfill is closed. In response to Mr. Lyle, Mr. Hoekstra stated that the landfill has about nine years of life at the current rates of waste being deposited. In response to a question from Ms. Vary, he stated that trying to use the methane being generated from the landfill for electricity production is cost prohibitive because of an insufficient volume being produced and the fact that there are no users for the electricity. He also stated that the State had eliminated tax incentives for the generation of electricity from landfill methane.

Mr. Steimel noted that the Union Ditch, which runs along the landfill, has a shallow slope and must remain where it is in order to drain the 2,500 acres its handles. Mr. Hoekstra agreed that any possible expansion of the landfill would have to leave the ditch where it is.

Mr. Faivre inquired about a well on the property that was there when there was a concrete mixing operation as part of the construction of I-88. Mr. Steimel noted that the well had been capped.

In response to Mrs. Allen, Mr. Hoekstra stated that there are several options for the possible expansion of the landfill. Some of them could involve the remediation of the old portion of the landfill that does not now have a lining to limit pollution. He stated that the need to address the future of the landfill is now, since it takes nine to 11 years to resolve these kinds of issues.

Mr. Addleman provided an overview of the landfills in northern Illinois, and noted that the landfills in Region 2, located east of DeKalb County and including Chicago, will be full and closed in three years. After that, waste from that region must go elsewhere. He noted that some of the tipping fee goes to the County to pay for its solid waste program and employees of that program. He also stated

that taxes on landfill operations are going up in Illinois. The State has 52 landfills. Of those owned by Waste Management, only two are restricted, one in Will County and the DeKalb County landfill. The DeKalb landfill is also the smallest of the 295 owned by Waste Management across the country.

He indicated that the landfill will not remain economically viable to continue operating at its current levels of use. He explained that other landfills accept 600, 1,000 or more tons per day of waste, as opposed to 300 tons in DeKalb. He also stated that there is competition from other waste haulers who own landfills elsewhere; if the DeKalb landfill is closed, residents of the County will pay more for their waste to be hauled elsewhere. Mr. Addleman stated that if he and Mr. Hoekstra could not find a way to increase the viability of the landfill, their superiors in Waste Management will make the decision. He briefly reviewed some of the alternatives that the County could consider for the future of the landfill. Some of these would guarantee DeKalb that, as its volume of in-county waste increases, the volume of out-of-county waste would be reduced so that the total permitted would not be exceeded, yet DeKalb residents would always be served. He explained that some of the alternatives would allow remediation of the old portion of the landfill as well. These options include the eventual construction of a transfer station.

Ms. Vary stated that she felt it is time for the County to study this issue and prepare to make a decision about the future of solid waste in DeKalb County.

Mr. Steimel stated that he agreed, the time had come for the County to set up a committee to address this issue.

BUILDING CODE UPDATES -- Recommendation by Chief Building Inspector for updates to the adopted Building Codes

Mr. Miller introduced the topic by explaining that every three or four years, the County updates its building codes to keep pace with changes in the building inspection industry. This is the way the County tries to be current with other jurisdictions that administer Building Permits.

Mr. Petrie reviewed the proposed building code updates. He noted some of the most significant changes, including increases in the required insulation for single-family houses which would likely require 2" x 6" construction rather than the traditional 2" x 4". He also reviewed some of the amendments being considered, including allowing additions to existing structures to be built with the same standards as the original structure. Mr. Petrie noted that the County is processing fewer single-family residences, but staying busy with commercial permits.

Mr. Faivre asked how the Committee is supposed to understand the technicalities of the proposed changes and determine whether or not they are needed? Mr. Miller explained that the Committee is not expected to become experts on construction, but rather to consider the policy issues related to updating the County building codes.

Mr. Steimel asked how these changes would compare to the requirements in DeKalb and Sycamore.

Mr. Petrie responded that the proposed standards would be more strict than DeKalb and Sycamore, but would be the same as municipalities using consultants for building inspectors, towns such as Genoa and Cortland. Mr. Miller added that it should be remembered that many of the single-family permits issued in unincorporated DeKalb County are for farm residences, which are exempt from

building code requirements.

Following further discussion, Mr. Slack suggested that the Committee would like to hear from builders as to their opinions on the proposed changes. It was agreed that staff should contact the DeKalb County Homebuilders Association and meet with them to discuss the technical changes. Someone representing the homebuilders could then be invited to attend the next P&Z Committee meeting on the proposal.

Ms. Vary made a motion to table this item to the May 24, 2006 meeting, seconded by Mr. Lyle, and the motion carried unanimously.

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

Respectfully submitted,

Roger Steimel
Planning and Zoning Committee Chairman

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