

**DEKALB COUNTY REGIONAL PLANNING COMMISSION**  
**MEETING MINUTES**  
**October 23, 2008**

The DeKalb County Regional Planning Commission (RPC) met on October 23, 2008 at 7:00 p.m. in the DeKalb County Administration Building, Conference Room East, in Sycamore, Illinois. In attendance were Commission members Frank Altmaier, Mike Becker, Bill Nicklas, Derek Hiland (DeKalb), Dan Godhardt, Suzanne Sedlacek, Bill Beverley, Rich Gentile, Becky Morphey, and Ralph Tompkins. Staff included Paul Miller and Rebecca Von Drasek. Also in attendance was Kelly A. Cahill (Zukowski, Rogers, Flood & McArdle), Claudia Tremaine, Ross Dueringer, Jim Schneider, Steven L. Naber, Ruth Anne Tobias, Laurie B. Curley, and Deron Stambaugh.

**1. Roll Call** -- *Commission members Cookie Aldis, Jerry Thompson, Jerry Olson, Roger Steimel, and Don Pardridge were noted absent.*

**2. Approval of Agenda** – Mr. Gentile moved to amend the agenda to include a brief presentation by Ms. Ruth Anne Tobias DeKalb County Chairman to present information pertaining to the upcoming Census.

*Mr. Tompkins moved to approve the agenda as amended, seconded by Mr. Nicklas, and the motion carried unanimously.*

Ms. Tobias began her brief report informing the Commission of the recent changes in the Regional Water Supply Planning Group funding. She explained that the project had been handed over to the University of Illinois, and that member Counties and Organizations had made financial contributions to provide the necessary funding to finish the work. She noted that DeKalb County pledged \$5,000. Ms. Tobias also provided the Commission with a handout from the Chicago Metropolitan Agency for Planning (CMAP) web site, which outlined findings from recent water surveys.

*Dan Godhardt entered at 7:03pm.*

Ms. Tobias then presented information pertaining to the General Census which will be conducted in 2010. She highlighted the Participant Statistical Areas Program (PSAP) with a two-page handout from the U.S. Census Bureau web site, and explained that the Census tracts categorizes specific groups of individuals that could be tracked as a group, although they do not have standard boundaries, such as town boundaries, to encompass them. She used the example of Lake Holiday as a specific group which is a recognized community that is distinct within the boundaries of Sandwich. Lastly, she explained that Sheila Santos and the County's Information Management Office would be working to designate these groups over the Winter and then they would be presented back to the local communities in the Spring.

**3. Approval of Minutes** -- *Ms. Sedlacek noted that on page three of the August 28, 2008 minutes that she had answered for the Village of Waterman in regards to the Comprehensive Plan updates, not Ms. Morphey as the draft minutes suggested.*

*Mr. Tompkins moved to approve the minutes as amended, seconded by Mr. Godhardt, and the motion carried unanimously.*

#### **4. Municipal Comprehensive Plan Status**

Mr. Miller explained that the County would be pursuing an update to the Comprehensive Plan in 2009 to be adopted in 2010. He informed the Commission that County staff had contacted each municipality to confirm their most recent update. The findings thus far as reported in the staff memo of September 30, 2008 indicated many communities have not updated their plans since the County's 2003 update. He reminded the Commission Members that these plans are intended to represent each communities values and should be updated from time to time.

<u>Municipality</u>	<u>Date of Current Plan/Amendment</u>
Kirkland --	2003
Kingston --	2003
Genoa --	November 18, 2003
Malta --	2003
DeKalb --	May 2005
Sycamore --	July 21, 2008
Cortland --	February 26, 2007
Maple Park --	November 16, 2006
Lee --	2003
Shabbona --	October 22, 2003
Waterman --	2005
Hinckley --	September 2003
Somonauk --	2003
Sandwich --	2004

Mr. Miller concluded by encouraging Commission Members to discuss updating their plans to reflect the new goals and objectives of the community and to explain the benefits of coordinating such an update with the County process.

*Bill Beverly entered at 7:13 pm.*

#### **5. Presentation by Kelly A. Cahill (Zukowski, Rogers, Flood & McArdle)**

Ms. Kelly Cahill of Zukowski, Rogers, Flood & McArdle, began her presentation on "What To Do When a Developer Goes Under" by providing Commission members with a booklet outlining her presentation. The Power Point presentation began with a hypothetical situation of an approved subdivision with some of the infrastructure completed but some, including final courses on streets, incomplete. She then highlighted improvements that could be made to the Letters of Credit (LOCs), amendments to Zoning Ordinances and Annexation Agreements to try to assure that municipalities could draw on funds to complete infrastructure in the event the developer walks away from the project. Ms. Cahill also suggested municipalities require "Public Improvement Completion Agreements." She encouraged the requirement that developers use a form Letter of Credit provided by the municipality, and included a sample form in the presentation booklet. Ms. Cahill pointed out that letters of credit are preferable to bonds, which

often cannot be drawn on without going through court actions. She noted that it was important for communities to include time frames within the agreements with developers. She also highlighted that communities should track their LOCs, or require that the bank to inform the municipality if they intend to let a Letter of Credit expire. Ms. Cahill then provided suggested text revisions that tie in the LOC to the annexation agreements, subdivision code, and other possible agreements. She encouraged the communities to intertwine many of these agreements so that the LOC can be accessed if any of the agreements are breached.

Mr. Tompkins asked if a developer could be forced to provide an amendment to an existing LOC which is no longer sufficient to complete the remaining work. Ms. Cahill noted that a provision of the initial agreements could include a requirement to reevaluate cost on a regular basis. She also encouraged individuals to refer to their existing codes to see if there is any requirements around the LOCs which could be used to reopen the amount of the LOC. Absent some understanding that the LOC's amount would be revisited, she suggested communities may try to renegotiate but that they might be unsuccessful.

Mr. Tompkins asked if a routine maintenance clause should be included within a LOC. Ms. Cahill highlighted a winter maintenance agreement, and included a provision if in violation of any municipal ordinance then the community could draw on the LOC.

Ms. Sedlacek provided as an example the Village of Waterman's situation with Green Ridge Subdivision, where the Village would only take ownership of the roads once the project was 70% built out. Ms. Sedlacek explained that 93 homes were built prior to the bankruptcy of the developer. Ms. Cahill noted that this was a political issue and if these tools were not already in place, solving these problems is not easy. She thought the community could undertake the maintenance and costs or wait for a future owner to complete the work. Ms. Cahill also acknowledged that many of the banks may not want to see the value of the properties diminish and they may make efforts to maintain the project. She also noted that this was what she was trying to help communities avoid with these problems.

A representative of the Green Ridge home owners asked who would be liable if an ambulance could not get to a property because of the lack of snow plowing. Ms. Cahill indicated that ultimately any lawsuits should be against the property owner, in this particular example it appeared that the bank is the owner.

Mr. Nicklas conceded that this issue is facing many municipalities and it will be the responsibility of each community to determine what quality of life they can provide and the amount of money they are able to commit.

Mr. Beverly asked if there were a way for a community to not take ownership and begin running a tab for a future lien on a development. Ms. Cahill noted a community would not want to accept the roads prior to them being completed. Mr. Nicklas stated that eventually there will need to be a negotiation with the concerned parties and something will be worked out but communities may not receive back the same amount as they put in and each community will have to determine what is acceptable to them.

Ms. Cahill then briefly highlighted the differences between a LOC and a Bond, noting that state law allows a developer to choose. She pointed out again that the LOCs are easier to collect, where as bonds are harder and often end up in litigation. Ms. Cahill noted that a community could put in an annexation agreement that a LOC rather than a bond be provided for the completion of public infrastructure and for performance on the subdivision. She asserted that if a developer files for bankruptcy that courts have held that the LOC is an agreement between a bank and a municipality so that those funds cannot be used to pay off the developer's debt. Also, she noted that if land was promised by a developer, then a future owner is obligated as well to donate the property. She suggested that the municipality ask for a subordination of mortgage from the mortgagor, so that the future owner is aware of the obligation, but she also mentioned that once the mortgage is paid there may not be funds remaining. Ms. Cahill continued by explaining that when commercial properties file for bankruptcy they are allowed to promote their closing sales with any means necessary. Lastly, Ms. Cahill discussed foreclosed homes and encouraged communities to review their property maintenance codes, consider liens, and agreements with the lenders to remedy the situation. She suggested that future Annexation Agreements include an escrow to maintain the property in the event a property is abandoned. She noted that a TIF district may be able to be created and even suggested that a SSA could be created to pay for the maintenance, however property owners would need to agree to it.

Mr. Nicklas stated that communities may want to consider creating a fund to address the problems created by foreclosed properties because too many years of inattention will result in a loss for the entire community. Mr. Miller agreed that there were overriding issues to consider if the properties are going to be abandoned for an extended amount of time what condition can the community accept.

Mr. Tompkins noted that the failure of erosion controls was also a serious problem. Grading problems are occurring where developments were supposed to build homes and then have changed the grade but do not yet have final grade resulting in depression areas which collect stormwater but do not drain correctly. Ms. Cahill felt the issue should also be included within a Public Improvement Completion Agreement. The Commission briefly discussed this problem.

Mr. Dueringer, mayor of Maple Park, also noted that his Village was mowing some vacant lots abandoned by the developer to try to maintain the properties for adjoining developed properties in the area.

Mr. Tompkins asked why LOCs, which are specifically tied to pieces within an engineer's estimate, could be applied or include some of the other aspects not covered by the LOC. Ms. Cahill noted that these other features should be included within future agreements. For existing agreements and developments, she concluded that the banks will generally not ask what the work will go toward, rather the municipality need only show the development is in default.

Mr. Nicklas noted that the communities cannot go back and renegotiate their existing agreements, and that once the banks take ownership, the community can meet with them but that the municipalities lack a legal tool to resolve existing problems. Ms. Cahill stated that the communities need to learn from these experiences and revise their future agreements.

The Commission then briefly discussed specific examples within their communities and thanked Ms. Cahill for her presentation.

#### **5. Discussion of Next Informational Seminar Topic**

Mr. Miller noted that with the upcoming elections, there may be a need for a future informational seminar to explain to newly elected officials related planning items and issues.

Mr. Nicklas thought the seminar should be scheduled in May or June to encompass individuals elected in the local elections that will be held in April of 2009.

Mr. Miller then asked the Commission to consider what information should be included at an informational seminar, and bring their thoughts to the next RPC meeting.

#### **6. Municipal Development Projects**

Mr. Beverly announced a new Director of Development for the City of Sandwich, Jim Teckenbrock.

Mr. Godhardt noted that the 84 Lumber has closed in Hinckley and the site was for sale. Mr. Gentile noted that the same was true in Genoa. Additionally, Mr. Godhardt noted that Hinckley was considering drawing on the LOC for the 80-unit subdivision north of town, because the sewer and water lines were in place but the site has not been seeded.

Mr. Nicklas noted he had met with Margaret Whitwell that the EAV would be increasing in the County although only half as much as a previous increase. He also noted that assessments would be increasing for taxpayers. He then expressed a concern that the State may look to municipalities to cover a share of the State's budget problems.

**The next RPC meeting is scheduled for January 22, 2009 at 7:00 pm in the Conference Room East.**

**7. Adjournment** -- *Mr. Tompkins motioned to adjourn, seconded by Ms. Sedlacek, and the motion carried unanimously.*

Respectfully submitted,

Rich Gentile  
Chairman, DeKalb County Regional Planning Commission