

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
August 26, 2009**

The Planning and Zoning Committee of the DeKalb County Board met on August 26, 2009 at 7:00 p.m. in the Conference Room East located in the DeKalb County Administration Building. In attendance were Committee Members Ken Andersen, Ruth Anne Tobias, Marlene Allen, Michael Haines, Larry Anderson, and Stephen Walt, and staff members Paul Miller and Rebecca Von Drasek. Also, in attendance were Gary Hanson, John Laskowski, Beth Losiniecki, Jim Nilles and other members of the public.

Ken Andersen, Planning and Zoning Committee Chair, called the meeting to order, and noted that all members were present except John Hulseberg and Pat Vary.

APPROVAL OF AGENDA

Mr. Haines asked that an item be added to the agenda to discuss the September 19, 2009 Smart Growth Seminar.

Mr. Miller informed the Committee that Mr. and Mrs. Schuning, petitioners for item #5 on the agenda, had withdrawn their request for the Special Use Permit Amendment. The item was removed from the agenda.

Mr. Ken Andersen asked that an additional discussion item be added to the agenda regarding a proposed zoning text amendment for minimum lot size for residential wind turbines.

Ms. Allen moved to approve the agenda as amended, seconded by Mr. Walt, and the motion carried unanimously.

APPROVAL OF MINUTES

Mr. Ken Andersen noted that Rod Kyler's name was misspelled within the draft July 22, 2009 minutes.

Ms. Tobias moved to approve the corrected minutes of the July 22, 2009 meeting of the Planning and Zoning Committee, seconded by Mr. Larry Anderson, and the motion carried unanimously.

Discussion Item - Trash Burning

Mr. Ken Andersen noted that he had received a complaint from a resident of unincorporated DeKalb County regarding trash burning on a nearby property. He noted that there are some State regulations that restrict burning, but that the County does not have an ordinance to prohibit trash burning. He sought discussion by the Committee on the issue.

Mr. Miller explained to the Committee that there is no County burning ordinance, but that State regulations allow the burning of materials produced on a given property. He stated that a local

ordinance could be more restrictive of the State law, but that the County has not adopted such a regulation in the past because the vast majority of land in unincorporated DeKalb County is agricultural. Farmers have traditionally and regularly burning materials produced on their properties. Mr. Miller explained to the Committee that hauling material from an offsite location and burning it has been a violation the County has enforced in the past. He added that it might be possible to interpret trash burning as a nuisance, but explained that in that instance, staff needs evidence to prove a nuisance. Mr. Miller reminded the Committee that any new regulation requires interpretation and enforcement, both of which activities require allocation of staff time and resources. Currently, there are no new revenue streams, so resources would have to be diverted to enforcing a burning ordinance. He added that fees and fines could be one method to help cover those costs. He also noted that if an ordinance to ban burning of trash were created, there would likely be a need for coordination between various departments involved in enforcement (i.e. Planning, Sheriff, Fire Districts, etc.).

Mr. Larry Anderson asked what was the exact problem or complaint. Mr. Ken Andersen responded that the complaint is noxious odors created by the burning of plastic and trash.

Ms. Allen clarified that the source of the complaints had been from within rural subdivisions in the County. Mr. Ken Andersen affirmed that was the case.

Mr. Larry Anderson asked what distance was between the property owners where the complaints initiated.

Ms. Tobias agreed that burning could be a nuisance.

Mr. Hanson noted that neighbors burning within proximity to his home did cause problems, pointing out that it was difficult to enjoy being outside when smoke is drifting from a trash fire, and that it could also cause health problems for some individuals. Mr. Hanson suggested the Committee consider restricting burning in proximity to municipal boundaries, perhaps within a quarter of a mile.

Mr. Larry Anderson asked Mr. Hanson if he had ever spoken to his neighbors about this issue. Mr. Hanson responded that he had not done so.

Mr. Ken Andersen invited the members of the public present to speak, noting that the issue had not been subject to a public hearing and therefore anyone present could speak on the issue.

One of the property owners present was the original complainant. She explained that she lives in proximity to North School and observed that several of her neighbors choose to burn rather than pay for refuse removal. The complainant added that burning the materials creates dioxin and other air pollutants. She stated that she has talked to neighbors when they burn trash; some have responded positively, but one neighbor in particular burns his trash twice a week.

Mr. Miller noted that trash burning was the primary problem, as opposed to the burning of landscape waste or wood.

Mr. Walt noted that everyone has garbage pickup. Mr. Miller responded that although property owners had the option for garbage service, they are not required to have it.

Ms. Tobias was surprised that the EPA did not restrict trash burning.

Mr. Ken Andersen understood that the agricultural community would be concerned about restricting a necessary task.

Mr. Laskowski observed that the interpretation between “generated” versus “produced” on site could allow for the separation between farm materials versus refuse.

Mr. Hanson suggested that most people are law abiding and if the County adopted a burning ban on trash, simply informing residents of this could curb the behavior.

Mr. Walt asked for Mr. Hanson’s suggestion to regulate the issue. Mr. Hanson responded that by very narrowly defining the area of restriction, many complaints could be addressed without burdening the agricultural areas.

Mr. Walt asked if the Committee could restrict properties simply by proximity to a municipal boundary. Mr. Miller responded that any proposition would be presented to the State’s Attorneys office for review. He also noted that the Committee could recommend restricting burning within certain zoning districts and not others.

Mr. Haines noted that there are many activities, such as the operation of four wheelers and dirt bikes, that cause nuisances. He suggested that many people could resolve issues with a neighbor by talking to them, but noted that many people would prefer to avoid conflict and have the police deal with it.

The complainant stated that she had approached two of neighbors regarding the burning and that one of them was responsive and the other was not.

Ms. Allen suggested that the County should be very careful about applying rules to some properties and not others.

Mr. Haines again asked why this issue was not a nuisance issue.

Mr. Larry Anderson asked if the landfill stink could be considered a nuisance and if it could be ticketed and shut down. He rhetorically asked how far do you carry this enforcement, noting many agricultural uses produce odors. Further, garbage, including used furniture, is often dumped in the road ditches along his property. He stated he gathers up and burns this waste at least four times a year because the ditches need to stay clean and the township is unlikely to carry out the task. Finally, he noted that if the County adopts a trash burning ban, it may have the effect of causing people who now burn their trash to instead dump it illegally in the countryside, where farmers would have to deal with it.

Mr. Miller stated that staff could research this issue by discussing the policies and preferences of the Sheriff's Department to determine their opinions on enforcement.

Ms. Allen agreed with Mr. Hanson that most people were law abiding and would respect the rules.

Mr. Ken Andersen asked staff to craft some text regarding the issue for the Committee to review and further discuss, either limiting the trash burning by zoning or distance after conferring with other concerned parties.

DISCUSSION ITEM - Prospective Text Amendment for Residential Wind Turbines

Mr. Ken Andersen noted that he had been contacted by property owner, Beth Losiniecki, who requested that the Committee consider revising the regulations related to small wind energy systems (residential wind tower) regulations. He explained that the request was to reduce the lot size necessary for residential wind towers from two acres to one acre.

Mr. Haines asked staff what was the original rationale for the two acre requirement. Mr. Miller responded that two-acre lot size is the minimum for the 4.02.D.2 split and for allowing livestock. It was also determined to be the minimum size necessary to assure that if a 100-foot-tall tower collapsed, it would be contained entirely on the property on which it is located.

Mr. Ken Andersen observed that the technology has continued to be improved and that the heights requirements are decreasing. He then asked Ms. Losiniecki if she wished to address the Committee.

Ms. Losiniecki noted that the current language prohibits her from installing a wind tower on her property, which is one acre in size. She wants to operate a business from her home selling residential-scale wind energy systems, and it would help her to be able to allow people to see, hear and feel one operating. She also noted that the tower would need to be clear of buildings for operation and would meet the required setback of the height of the tower plus 10 percent. She then suggested that if the County seeks to be "green," allowing wind towers on one acre properties would help meet the goal. Finally, Ms. Losiniecki stated that, as a small business owner, the cost of seeking the text amendment is onerous.

Ms. Vary arrived at 7:45 pm.

The Committee briefly debated the type zoning action that was necessary and method by which the Committee may decide to seek such action. Mr. Ken Andersen noted that some Committee members had indicated in the recent past the desire to make it easier for entrepreneurs in unincorporated DeKalb County to start businesses.

Mr. Miller noted that, if the Committee felt that it is in the interests of all DeKalb County citizens that small wind towers be an option on one-acre or larger properties, the Committee could direct staff to initiate the necessary zoning text amendment. He cautioned, however, that if

the Committee directed staff to seek the text amendment in order to save a petitioner the zoning fees, it would establish a precedent that the County is waiving such fees.

The Committee discussed the requested text change and concluded that the issue should be addressed as a matter that is germane to all of unincorporated DeKalb County.

Mr. Haines moved to direct staff to apply for a Zoning Text Amendment to consider permitting small wind energy systems on properties one acre or larger, seconded by Mr. Walt, and the motion carried unanimously.

MONTHLY REPORT

Mr. Ken Andersen asked that the Value of Construction on the Planning, Zoning and Building Department monthly Building Report include an asterisk to denote the spike in fees and values which are related to the wind farm under construction in the southwest portion of the County.

DISCUSSION ITEM - Smart Growth Seminar

Mr. Haines asked how the lunches for the upcoming Regional Planning Commission seminar would be purchased? Mr. Hanson responded that the cost would be covered by the County's Go Green budget.

ADJOURNMENT

The Planning and Zoning Committee is next scheduled to meet September 23, 2009 at 7:00 p.m. in the Conference Room East.

Ms. Tobias moved to adjourn, seconded by Mr. Walt, and the motion carried unanimously.

Respectfully submitted,

Kenneth Andersen
Planning and Zoning Committee Chairman