

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
July 22, 2009**

The Planning and Zoning Committee of the DeKalb County Board met on July 22, 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, John Hulseberg, Marlene Allen, Pat Vary, Michael Haines, Larry Anderson, and Stephen Walt, and staff members Paul Miller and Rebecca Von Drasek. Also, in attendance were Roo Kyler, Steve Rosene, Mel Hass, Richard Schmack, Ron Korth, Roger Craigmile, and Dawn Felix.

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

APPROVAL OF AGENDA

Ken Andersen asked that an additional discussion item be added to the agenda regarding the proposed temporary suspension of future wind farm developments.

Mr. Hulseberg asked that discussion on a change to the Site Development Fee review also be added to the agenda.

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

APPROVAL OF MINUTES

Mr. Hulseberg noted the word “four” was omitted from page six of the minutes of the June 24, 2009 Committee meeting, indicating the number of members which voted in favor of a failed amendment to the Temporary Suspension motion.

Ms. Vary moved to approve the minutes of the June 24, 2009 meeting of the Planning and Zoning Committee as amended, seconded by Mr. Hulseberg, and the motion carried unanimously.

ZONING MAP AMENDMENT

Mr. Miller briefed the Committee on the history of the application of Dawn Felix for rezoning the property at 16161 Whipple Road in Sycamore Township from A-1, Agricultural District to PD-R, Planned Development - Residential. He noted that the property owner previously sought Variations from regulations of the Zoning Ordinance regarding illegal, nonconforming lots and uses, but that the Hearing Officer and Planning and Zoning Committee had both recommended denial of that request. The petitioner requested the County Board table action on the Variation requests and filed the application for a Zoning Map Amendment for the 1.4-acre subject property, which is located on the north side of Whipple Road, approximately 3,140 feet east of State Rte. 23. The required public hearing was conducted on June 25, 2009 by DeKalb County Hearing Officer Kevin Buick. At the hearing, the petitioner presented testimony in support of

the request, asserting that the requested zone change would make the subject property conforming with respect to the County Zoning Ordinance. It was noted that the Future Land Use Plan of the DeKalb County Unified Comprehensive Plan shows the subject property as appropriate for Residential use, and that the adjoining property to the west is currently zoned PD-R. It was also asserted that the trend of development is toward residential uses in this area. Staff noted at the hearing that the Comprehensive Plan recommends a specific density of residential use of three to six units per acre, not just any type of residential use, and further recommends that the non-agricultural uses shown on the Future Land Use Plan occur through annexation to a municipality. Mr. Miller also pointed out at the hearing that the nonconforming lot could be brought into compliance by purchasing additional adjoining acreage or selling the residence back to the previous owner, and staff expressed concern that approval of this request would set a precedent for other agricultural properties that adjoin properties zoned PD-R. Mr. Miller noted that staff had recommended denial of the request. The Hearing Officer recommended approval of the Zoning Map Amendment.

Ms. Vary informed the Committee that she had driven past the property and reviewed the surrounding area, and noted that she was impressed with the number of homes near the subject property. She emphasized that farmland would not be taken out of active use if this request was granted. She then asked the petitioner why only the front lot was included in the application. Mr. Schmack, attorney for Mrs. Felix, responded that only the front lot was included in the Comprehensive Plan's recommendation for Residential future uses.

Mr. Hulseberg asked staff for comment on the application and the Hearing Officer's findings. Mr. Miller noted that any zoning action required a subjective review of objective criteria, and opined that the Hearing Officer was swayed that the existing use was more in line with the PD-R zoning. Mr. Miller explained that staff respectfully disagreed with the findings because ignorance of the rules did not justify exemption from them, and because of the negative precedent that would be set by approval.

Mr. Haines asked if either of the cities of Genoa or Sycamore had expressed an opinion either way on the issue. Staff responded that no comment had been received.

Mr. Ken Andersen noted that if the cities did not comment, the County could view that as a lack of concern regarding the issue. He expressed to the Committee that he felt the rezoning should be approved because this was an example where elected officials could help a property owner with circumstances which could be improved by the action of elected officials.

Mr. Walt asked staff to expound on the precedent that could be set by this rezoning. Mr. Miller responded that any property owner whose 40-acre or greater farm adjoins a property zoned PD-R in an area designated for Residential use on the Future Land Use Map could build a farm dwelling on the farm, then split the house off on less than 40 acres and request a rezoning to PD-R, citing the Felix approval as precedent for approval.

Ms. Tobias asked if in staff's opinion there are many properties that would meet such specific circumstances. Mr. Miller responded that there were more properties that this could apply for

than it may appear, noting that there are areas zoned for PD-R throughout the County which are surrounded by agriculturally zoned areas.

Mr. Haines asked staff if approving this rezoning was likely to increase the number of residences in the unincorporated areas of the County. Mr. Miller responded that he believed it would, and added that the Hearing Officer's findings when reviewed solely from a land use perspective could make sense, however, when the history of how the house and property came to be in this circumstance are added into the review it is hard for staff to argue that the circumstances will not be repeated.

Mr. Haines expressed concern about rewarding bad behavior, and noting that other landowners with an empty piece of property would be denied a request for rezoning.

Ms. Vary acknowledged that the property is blatantly attempting to get around the regulation, but it is adjacent to PD-R and is in the Comprehensive Plan as an area for residential housing. She concluded that she did not believe there were that many examples of similar properties.

Mr. Ken Andersen asserted that this was the opportunity for elected officials can help correct a bad situation so that if a tornado destroyed this family's home they could replace it.

Mr. Haines noted that there were other ways to rectify the nonconformity. The Committee briefly discussed the expense of purchasing an additional 38 acres or selling the residence back to the previous owner.

Ms. Vary moved to recommend approval of the rezoning, seconded by Mr. Hulseberg. Mr. Larry Anderson requested a roll call vote on the motion. The motion failed, with Mr. Ken Andersen, Mr. Hulseberg and Ms. Vary voting "yes", and Mr. Haines, Mr. Larry Anderson, Ms. Allen, Mr. Walt and Ms. Tobias voting "no".

Mr. Larry Anderson moved to recommend denial of the rezoning, seconded by Mr. Walt. The motion passed with Mr. Larry Anderson, Ms. Allen, Mr. Walt, Mr. Haines and Ms. Tobias voting "yes", and Mr. Ken Andersen, Ms. Vary and Mr. Hulseberg voting "no".

BUILDING CODE AMENDMENT

Mr. Ken Andersen introduced the request of Gary and Carole Pettee for an Amendment to the Text of the 2003 International Building Code as adopted by DeKalb County. The amendment is related to the requirement to provide a two-hour firewall on exterior walls when a hangar of 2,000 square feet or more in size is located 30 feet or closer to a property line, on properties in unincorporated DeKalb County. Mr. Andersen noted for all present that this issue had not been subject to a public hearing and therefore the public was welcome to comment on the issue.

Mr. Miller briefed the Committee on the circumstances by which the Pettees were requesting the amendment to the County's Building Code. He explained that the need for the two-hour firewall had been specifically pointed out by staff on the Building Permit issued to the Pettees for the hangar, but that the structure had been subsequently built without the firewall. He also explained

that there is no Variation process for the Building Codes, and that the Building Board of Appeals convenes only when there is a dispute as to the interpretation of the building regulations. The issue is not one of interpretation, but rather the applicant seeks for the County to change the regulation to allow that if there are no buildings or structures on the adjoining property within 30 feet of the common property line, the two-hour firewall requirement can be waived.

Ms. Pettee provided an aerial map to the Committee showing that the building on the Pettee's property backs up to a farm field. She emphasized to the Committee that future structures on the adjoining farm were highly unlikely, as the farmer was unlikely to build in a location which would require utilities and a driveway to travel more than 2,000 feet. Ms. Pettee explained to the Committee that the materials stored in this type of hanger were no more hazardous than the storage of farm equipment and other large vehicles. She asserted that no jet or jet fuel would be stored in the hanger. She also noted the unlikelihood of the County ever allowing another airport subdivision to which the standard may apply in the future. Ms. Pettee pointed out the financial burden of installing a firewall in the hanger, and informed the Committee that she could find no evidence of any recent airplane hanger fires. Finally, she explained that most residential hangers are not required to install a firewall.

Mr. Miller reiterated that this would be a revision to the International Building Code as adopted by the County Board and applicable to all future residential airplane hangers more than 2,000 sq. ft. which are placed within 30 feet of a property line. He noted that Toby Petrie, the Chief Building Inspector, had recommended denial of the proposed amendment. Mr. Miller also pointed out that there is no guarantee that an adjoining property owner will not build a structure within 30 feet of the common property line, and a hangar built without the firewall could not then be forced to retrofit.

Mr. Haines asked staff what are the possible remedies for the Pettee's predicament. Mr. Miller responded that they can either install the firewall as required or seek to amend the Code. Mr. Miller also noted that the County has a Board of Appeals, but that panel has not met in many years and is actually charged only with reviewing appeals of the Building Inspector's interpretation of the building code. Mr. Miller asserted that the interpretation of this provision was unambiguous.

Ms. Vary asked staff if a building were built in the future in proximity to a hanger if the County could then require the installation of a firewall. Mr. Miller emphasized that the County could not require retrofitting of the hangar.

Mr. Walt stated that he was not prepared to change the International Building Code.

Ms. Vary opined that the Planning and Zoning Committee was often asked to make similar decisions.

Mr. Ken Andersen asked staff to reexplain the history of the request. Mr. Miller noted that the Pettees filed for a Building Permit, as part of the Building Inspector's plan review the requirement to build the two-hour firewall was included, the Pettee constructed the pre-built building and failed to install a firewall.

Ms. Pettee again emphasized the rarity of the application of this particular standard. Mr. Miller agreed with Ms. Pettee that this issue was unlikely to ever occur in the future, where a 2,000 sq. ft. residential hanger would be constructed within 30 feet of the property line in a residential subdivision, due to the County's discouraging subdivision developments in unincorporated areas. However, the regulation was a matter of public safety and is considered a minimum standard.

Mr. Haines asked the Pettee's why they had ignored the requirement. Ms. Pettee noted that the time frame from when the Permit was sought, issued and the building was built had been spread out over several months, and that Mr. Pettee's degrading health had caused an oversight on their end. She also emphasized that there was no intention to go against the County's requirements and if she could go back they would not construct the hanger.

Ms. Vary noted that the Board Members were transient in some sense and that the future could include many residential hangers.

Mr. Walt moved to deny the requested amendment to the County's Code, seconded by Mr. Hulseberg, and the motion carried unanimously.

DISCUSSION ITEM - Small businesses and agri-tainment uses in rural DeKalb County

Mr. Miller explained that the Committee had recently discussed the effects of existing regulations and policies on small businesses that are located in unincorporated DeKalb County. The Committee seeks to discuss these regulations, with the goal of understanding why the policies were put in place, the effect of those policies, and some options for and consequences of alternatives.

Mr. Haines stated that he understood that the purpose of the County was not to create businesses in the A-1 District, but asserted that there may be a method the County could use to provide preferential treatment to businesses that the County wants to encourage. He also noted that he felt it was unfair that smaller businesses pay similar fees that larger commercial enterprises pay.

Mr. Miller explained that larger applicants do pay a higher amount in zoning fees because the County has a three tiered system for staff time (\$100, \$500 and \$1,000). He expressed to the Committee that the cost of processing an application is intended to be borne by the applicant. Mr. Miller noted that some business endeavors (i.e., home offices, small scale agri-tainment, roadside stands, etc.) are permitted by right and other uses require a Special Use Permit.

Ms. Allen stated that the County was not out to encourage business, if a property owner wants to operate a business they can seek the appropriate permits.

Ms. Vary asserted that the issue may be better addressed in the Economic Development Committee.

Mr. Miller agreed noting that possibly the Economic Development Committee could, for instance, consider the possibility of “micro” grants to local businesses to cover their zoning fees, perhaps with funds from the DeKalb County Community Foundation or a similar group.

The Committee continued discussion on the method by which businesses are offered incentives through tax abatements and other means and which was the preferable method. The Committee also debated the balance between incentives and preferential treatment.

Staff reminded the Committee that in regards to land use decisions there are a different set of laws and regulations regarding zoning actions versus economic development. Mr. Miller noted that many of the rules are created to prevent arbitrary or capricious decisions regarding land use.

Mr. Walt stated that he agreed that the issue should be discussed further by the Economic Development Committee.

Mr. Hulseberg asked if the Planning and Zoning Committee should recommend an action to the Economic Development Committee. Ms. Vary responded that she was on the Committee and could bring it to their attention.

DISCUSSION ITEM - Wind Farm Building Permit Fees

Mr. Miller explained that staff had reviewed the amount of time dedicated to reviewing Building Permit applications for the Commercial Wind Turbines at the Committee’s request. Staff found that the current fee of \$550 set in 2003, did not reflect the County’s current cost. Staff suggested an increase of \$100 for a fee of \$650 per Wind Turbine Building Permit application.

Ms. Vary moved to recommend approval of increasing the Building Permit fee to \$650, seconded by Ms. Allen, and the motion carried unanimously.

DISCUSSION ITEM - Site Development Permit Fees

Mr. Miller explained that the Highway and Planning & Zoning Departments had reviewed the amount of time dedicated to reviewing Site Development Permit applications and found that the current fee of \$300 (\$200 for engineering and \$100 for Planning staff) for a permit and \$50 per hour for additional engineering review set in 1997, did not reflect the County’s current cost. County Highway Department staff suggested an increase of \$100 for a fee of \$400 per Site Development Permit application (\$300 for engineering and \$100 for Planning staff) and a \$25 per hour increase for additional engineer review.

Ms. Vary moved to recommend approval of increasing the Site Development Permit fee to \$400 and the engineering review fee to \$75 per hour, seconded by Mr. Hulseberg, and the motion carried unanimously.

DISCUSSION ITEM - Wind Farm Temporary Suspension

Ms. Vary asked why the issue was sent back to Committee as she had been unable to attend the County Board meeting July 15, 2009. Mr. Ken Andersen responded that he felt that the issue needed more discussion and admitted that he had a concern with “putting up stop signs” to this type of project.

Mr. Larry Anderson asserted that the temporary suspension was not permanent.

Mr. Walt stated he had understood the purpose of the suspension as a review of the County Board’s decision to allow the wind farm, and added that he felt that the County Board had made the correct decision in allowing the wind farm project.

Ms. Tobias observed that every Committee member had voted in favor of the temporary suspension

Ms. Allen informed the Committee that she had received calls from constituents that would want to encourage a similar project in the southeastern portion of the County and therefore she would change her vote.

Ms. Vary stated she viewed the suspension as an opportunity to review the effect of an actual wind farm before approving more turbines within the County.

Mr. Haines termed the idea a “Period of Assessment” and agreed with Ms. Vary that the review allows DeKalb County to form an opinion of the technology prior to allowing additional turbines.

Ms. Allen emphasized that any future application would need to seek a Special Use Permit which would allow the County to review each project on its own merits.

Mr. Larry Anderson stated that he wanted the three years of review to determine if anything else needs to be included within the County’s conditions of approval.

Mr. Ken Andersen agreed with Ms. Allen that the County would assess all future applications.

Mr. Haines asserted that the “Period of Assessment” could serve as notice to future developer that the County is still assessing the first project. He added that rather than a stop sign to future projects it could serve as a yield sign.

Mr. Ken Andersen then recognized members of the public to comment on the issue.

Mr. Hass emphasized to the Committee that he supported a suspension, noting the perceived rift between neighbors the project had caused in the four townships. He asserted the rationale for the assessment period by mentioning that the Conditions of Approval included training requirements, shadow flicker abatement, resolution to communication interruptions, and the property value guarantee program he felt needed to be reviewed prior to allowing other projects.

Mr. Ken Andersen suggested that maybe a suspension should be put in place for only the four townships, Milan, Afton, Shabbona, and Clinton.

Mr. Haines asked if during the Period of Assessment a possible compromise would be to allow developers to make a Special Use application but not approve any building permits within the three-year assessment period.

Ms. Vary responded that by allowing applicants to go through the Special Use process the County would not take advantage of the actual assessment and review of the FPL project. She added that three years would go by quickly.

Ms. Allen emphasized that the future projects would be reviewed by the Planning and Zoning Committee through the Special Use process and if the Committee felt they needed more information when they received an application they could ask for it.

Following further discussion, Mr. Haines made a motion to recommend to the County Board that it establish a "Period of Assessment for Commercial Wind Turbines" during which time Special Use Permit applications could be accepted but no Building Permits issued for three years, seconded by Mr. Walt.

Mr. Ken Andersen asked for additional discussion on the motion.

Ms. Vary noted that she disagreed with the motion.

Mr. Rosene reminded the Committee that in allowing developers to make a Special Use application they would need to solicit property owners for lease agreements and easements prior to the County deciding if future wind turbines are even appropriate.

Ms. Vary agreed.

Mr. Miller noted that the practical effect of the motion would result in staff informing any possible applicant that the County would review an application but not guarantee permits. He hypothesized that this would dissuade most applicants because of the expense of the application process. Mr. Miller also noted that the County expends staff time and money to process applications for these big projects.

Mr. Walt noted that he agreed with the motion because it appeared to be a compromise by those who want a moratorium and those opposed to preventing future applications.

Mr. Hass brought the Committee's attention the fact that McGirr road was being converted to gravel and that this was an unknown consequence of the approved project already.

Mr. Haines noted that any applicant risks the expense of an application which could be denied.

Following further discussion, Ms. Vary moved to amend the motion to strike the allowance for accepting Special Use Permit applications, seconded by Ms. Tobias.

Mr. Hulseberg noted that he would be in favor of a five year Period of Assessment.

Mr. Ken Andersen noted that the City of Sycamore had a similar system for subdivision approvals and limited the number of building permits that the City would issue, he felt that this discouraged new developments.

Ms. Allen noted that she was basing her vote on the will of her constituents, who might want to see turbines built in the southeastern portion of the County

Ms. Vary asserted that the hearing process and staff time that would be spent on an application, but then the developer would have to wait for Building Permits. She urged the Committee members to think about the intent of an assessment and reflect on the opinions of that assessment needing to be reflected in future projects conditions.

The motion and amendment were then repeated and role call votes were requested.

On the motion of Ms. Vary, the vote was three "yes" and five "no", and the motion failed.

On the original motion by Mr. Haines, the vote was four "yes" and four "no", and the motion failed.

Mr. Miller offered that the Committee could send the issue undecided to the County Board for review, but that would mean that the discussion would have to occur at a County Board meeting. The purpose of the Committee system is to work out these issues at the lower level.

Mr. Walt motioned to send the issue to the County Board for review, seconded by Mr. Hulseberg.

The Committee briefly discussed the Committee structure and Mr. Walt and Mr. Hulseberg decided to withdraw their motion rather than send an open-ended question to the full board.

Mr. Haines made a motion to send to the County Board a recommendation of a three year assessment period in which no Special Use application or amendments for wind turbines will be reviewed, seconded by Ms. Vary. By roll call vote the motion passed by with six "yes" and Ms. Allen and Mr. Ken Andersen voting "no."

MONTHLY REPORT

Mr. Miller explained that Chairman Andersen had requested a copy of the monthly Building Report and an update on Zoning Actions for the Committee's review. Mr. Miller also handed out an information sheet regarding the landfill expansion and he suggested Committee member take advantage of the landfill tour.

Ms. Tobias noted that she had attended the July tour as well, and noted that the group was able to see many different phases of the landfill process, including the beginning setup for methane capture for electrical generation.

Mr. Ken Andersen relayed to the Committee that progress continued to be made on the Countywide contour maps, and also informed the Committee that the Stormwater Management Committee would most likely meet again in October. Mr. Andersen noted that the County continues to pursue the mitigation of the Evergreen Village mobile home park. He read from a memo to the Stormwater Management Committee from Paul Miller dated July 15, 2009 that: The Illinois Emergency Management Agency has forwarded the project to F.E.M.A., and has indicated it has sufficient funds for the 75% Federal portion. Indications are good that F.E.M.A. will approve the project. The 25% matching funds are also being pursued, with one possibility being funds from the Department of Commerce and Economic Opportunity, which received flood recovery funds from H.U.D. Representatives of IEMA are working to secure this funding, and staff is hopeful that an answer will be forthcoming before the end of the year.

The Planning and Zoning Committee is next scheduled to meet August 26, 2009 at 7:00pm in the Conference Room East.

ADJOURNMENT

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

Respectfully submitted,

Kenneth Andersen
Planning and Zoning Committee Chairman

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