

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
March 25, 2009**

The Planning and Zoning Committee of the DeKalb County Board met on March 25, 2009 at 7:00 p.m. in the Conference Room East located in the DeKalb County Administration Building. In attendance were Committee Members Ruth Anne Tobias, John Hulseberg, Marlene Allen, Pat Vary and Michael Haines, and staff members Paul Miller and Rebecca Von Drasek. Also in attendance was Dale Hoekstra, Christel Springmire, Bob Drake, Karen Grush, Mark Johnson, Claudia Johnson, Richard Schmack, Dawn Felix, John Felix, Sherry Hellmuth, Robert Hellmuth, Mel Hass, Rodney Kyler, and Roger Craigmile.

Ms. Vary, Planning and Zoning Committee Vice Chairman, called the meeting to order, and noted that Ken Andersen, Larry Anderson, and Stephen Walt were absent.

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

Mr. Haines moved to approve the minutes of the February 25, 2009 meeting of the Planning and Zoning Committee, seconded by Ms. Allen, and the motion carried unanimously.

NONCONFORMITY VARIATIONS REQUEST

Mr. Miller briefed the Committee on the application filed by Dawn Felix, the property owner, for Variations for property located at 16161 Whipple Road in Sycamore Township. The request is to waive the restriction of Section 8.03.B.2.b. of the DeKalb County Zoning Ordinance that prohibits the enlargement, expansion, extension or alteration of a nonconforming residential use where such nonconformity was created by action(s) of the current or previous property owner and not by government action; and to waive the regulation of Section 8.05.D that a nonconforming lot, where such nonconformity was created subsequent to September 18, 1991 by action or actions of the current or previous property owner(s) and not by government action(s), is declared an illegal nonconforming lot and new uses, buildings and structures, and additions to existing uses, buildings and structures, shall not be permitted on such lots, and repair of existing buildings and structures which are damaged by any means, if the cost of such repair exceeds 50% of the value of the building or structure, shall not be permitted. The 2.5-acre subject property is located on the north side of Whipple Road, approximately 3,140 feet east of State Rte. 23, and is zoned A-1, Agricultural District. Mr. Miller explained that the petitioner sought in 2008 a Building Permit for construction of a detached garage. In reviewing the zoning status of the subject property, staff determined that the 1.35-acre parcel that includes the house had been separated from the 40-acre parent tract in 1993 (the petitioner subsequently purchased an adjoining one acre parcel to the north). This made the parcel illegal, nonconforming with respect to the minimum 40-acre requirement for farm dwellings in the A-1, Agricultural District. Mr.

Miller emphasized that the regulations for nonconformities set forth in Article 8 of the Zoning Ordinance detail that the residential use may not be expanded by the construction of new structures. In order to correct the zoning status he explained, the petitioner is seeking a waiver of the regulations that render the property illegal nonconforming. Mr. Miller noted that the DeKalb County Hearing Officer Kevin Buick conducted the required public hearing on the application on March 12, 2009. The petitioners indicated that they and Mr. Schelkoff, the previous property owner, understood from legal representatives that the split of five acres including the house from the 40-acre parent tract was legal at the time it was done in 1993; had they known a rezoning was needed, it would have been sought at that time. The petitioner alleged that the situation is unique given the presence of residentially-zoned properties both adjacent and in the general area, and further noted that the Future Land Use Plan of both Sycamore and DeKalb County shows the subject property as appropriate for residential development. There would be a particular hardship if the Variations are not granted because the house would be practically unsaleable and if it was 50% damaged, it cannot be repaired. Staff noted that no testimony was given at the time of the original split that anyone involved in the transaction had checked with County regulations. Staff also noted that this is the first time that an application has been made for Variation to correct an illegal, nonconformity, and raised concerns about the negative precedent approval of such Variations would make. Finally, staff asserted that the petitioner had failed to show there are unique circumstances associated with the request, and that the alleged particular hardship was of the current and previous property owners' own making. Two members of the public spoke in favor of the request, one asked a question related to a proposed garage on the subject property, and none spoke in opposition. The Hearing Officer has submitted his report and recommended denial of the requested Variation.

Ms. Vary noted the difficulty and gravity of the situation.

Mr. Haines clarified that the house when it was originally constructed was given a building permit on 40 acres and then divided off after construction. He asked why the split was not caught in the process. Mr. Miller responded that the County is not invited to sit in on real estate closings, and that the State Plat Act permitted the division of five acres, however the DeKalb County Zoning Ordinance required that 40 acres be associated with the residence. Additionally Mr. Schmack, attorney for Ms. Felix, noted that his client was not represented by an attorney at the closing.

Mr. Miller then explained that another aspect of the Plat Act allowed Ms. Felix as an adjoining property owner to then deed back to the Schelkopfs the three-plus acres. Mr. Hulseberg asked if this was a loophole to subvert regulations. Mr. Miller responded that the Plat Act includes exceptions so that individuals can avoid the lengthy process of submitting a subdivision plat for smaller land deals, noting that what was done by the attorney was in keeping with state statutes.

Ms. Allen noted that if the permit was issued on a 40-acre lot someone involved knew that the County required a 40-acre parcel. She also noted that the regulation has been in place for many years since 1976 and was not a secret.

Mr. Haines noted that even if the petitioner had received bad advice from an attorney that the Committee could not accept the claim that they were unaware of the rules and therefore exempt.

He indicated that he felt this would only make it more difficult in the future for the Committee to deny anyone who states that they were unaware of regulations. He went on to suggest that possibly the property owner could resolve the issue by purchasing 37-plus acres from the surrounding property owner and then lease back the property for farming.

Ms. Tobias asked if the original 40-acres were being farmed. Mr. Miller noted that a portion of the original 40-acres are wooded, he also noted that the original parcel was on both sides of Whipple Road, and that the Schelkopfs, the original owners of the subject property, still own the surrounding property.

Mr. Hulseberg asked the petitioner if the Schelkopfs had built the house for them and they responded that the Schelkopfs had built it for Ms. Felix.

Ms. Vary explained to the petitioner that the Committee had regularly turned down individuals seeking to build a residence on less than 40-acres, and that it would be unfair to them if the Committee were to allow the Variation. Ms. Vary suggested the reverse of Mr. Haines' suggestion that possibly the land and house could be sold back to the Schelkopfs to create a legal conforming lot. She also asked staff if this property could be incorporated, Mr. Miller pointed out that the City of Sycamore has signed an intergovernmental agreement not to annex properties north of Whipple Road.

Mr. Hulseberg inquired if the petitioner could seek a re-zoning of the property to a residential district. Mr. Miller noted that this avenue had been discussed with the petitioner but that the recommendation from staff would be denial for reasons related to the purpose and intent of the PD-R regulations.

Ms. Vary again noted an appreciation for the difficulty placed on the property owner, but she emphasized the importance of consistency from the Committee on the 40-acre rule, so as not to be arbitrary or capricious. She stated that over the course of many years the Committee has turned away many individuals seeking variation from the 40-acre rule prior to building a residence and that it would be unfair to allow someone a variation after the fact simply because they were unaware of the regulation. Ms. Vary also noted that the County has had the policy to preserve farmland and encourage growth near the municipalities for many years and asserted that she felt that the policy was important.

Ms. Tobias moved to recommend denial of the Variations, seconded by Mr. Haines, and the motion carried with a vote of four in favor and Mr. Hulseberg opposed.

Ms. Vary noted the County Board would vote at its April 15, 2009 meeting at 7:30 pm in the Gathertorium of the Legislative Center.

LANDFILL LICENSE ANNUAL RENEWAL

Mr. Miller explained that Waste Management of Illinois has filed an application for renewal of a County license to operate the DeKalb County Sanitary Landfill. The landfill is located east of Somonauk Road, immediately south of the I-88 Tollway, in unincorporated Cortland Township.

The property is zoned A-1, agricultural, with a Special Use for the operation of a landfill. The authority for the County to annually license garbage disposal areas, and establish a fee for such license, is set forth in the Illinois Compiled Statutes, 55 ILCS 5/5-8002 and 8003. As operator of the landfill, Waste Management annually applies for renewal of the County license. The period for the requested license renewal is May 1, 2009 to April 30, 2010. He then introduced Dale Hoekstra with Waste Management.

Mr. Hoekstra informed the Committee that in the past year the landfill had received 90% of its material from inside the County and 10% from outside the County. He noted that materials that could be reused such as landscaping wastes were mulched and sold, to prevent this material from taking up landfill space. He provided an aerial map of the landfill and noted that the 88-acre site is permitted to hold waste mass under the current permit. He explained that the existing flare on the property, located on the north side of the site facing I-88 will be moved in conjunction with an approval of the expansion. The new flare would be placed in a more central location for the wells to access it. Mr. Hoekstra noted that three new wells were installed in January, 2009 in response to odor issues. He noted that the wetter weather encouraged a greater rate of decay which in turn increases the amount of methane released. Lastly, Mr. Hoekstra pointed out there was a decrease in the quantity of trash in 2008, down nine percent from previous years, due in part to the slow down in the economy. He explained that less construction and less shopping result in less waste. He concluded that there was seven years of life left at the approved facility.

Ms. Tobias asked if the eastern areas of the site had their final cap. Mr. Hoekstra indicated that those areas were at their final elevation of 945 feet. He referenced the aerial photograph noting that approval of the expansion would allow old material deposited by the previous owner to be removed and mitigate an existing environmental threat at the site. He then briefly relaid the history of the site, including that prior to the use as a garbage dump it was a quarry.

Mr. Haines asked if the expansion were not approved what would Waste Management do to deal with this issue. Mr. Hoekstra noted that Waste Management continues to monitor the area and has taken steps to prevent contamination to the ground water, and have found improvements since those steps were taken. Mr. Hoekstra also noted that the site was monitored by the IEPA.

Mr. Hulseberg asked what was removed from the quarry, Mr. Hoekstra noted that a form of gravel was removed and replaced with refuse.

Mr. Hoekstra then explained the structure of a landfill and displayed a cross section drawing to show the top and bottom liners (60 ml & 40ml membranes), compacted trash, leachate collection system, gas wells, etc. He also noted that a future expansion would include improvements and additional ground water monitoring wells. In conclusion, he explained the construction would be monitored by both a third party firm and the IEPA to guarantee the construction is in compliance with the state regulations.

Ms. Tobias asked if the flare's location is changed if it would effect the odor, Mr. Hoekstra explained that the odor does not originate from the flare so moving it will not make a change.

Mr. Hoekstra informed the Committee that the landfill is currently producing 900 cfm and that 1200 cfm is required for electricity generation, so the landfill was getting close but not there yet. He emphasized that the increase in methane production was related to wetter conditions which results in more odor and higher capacity of methane which can be used to generate electricity.

Mr. Hulseberg asked if the renewal license was for any increase in capacity, Mr. Hoekstra responded that it was not.

Mr. Haines asked about the recent closure of a recycling plant in DeKalb, noting that a recycling plant run by another hauler was closed in Genoa. Mr. Hoekstra agreed that there was less recycling options available, and highlighted that Waste Management had agreed to place three containers, one in the north, center, and south of the County, provided that the sites were monitored to deter hazardous dumping. He stated that Waste Management was waiting for the County to give them direction as to where they could be placed.

Ms. Vary suggested that lists of what is recyclable should be posted at various locations on the County web site. Christel Springmire, DeKalb County Health Department offered to confirm that it was part of the Environmental Health section of the County web site and confirm it was linked with the Go Green sites.

Ms. Tobias asked how the market was for recycled materials. Mr. Hoekstra noted that it was down considerably and that Waste Management was storing pallets of materials waiting for buyers.

Mr. Haines asked if a municipality came to a separate agreement with Waste Management would this interfere with the County receiving the three containers. Mr. Hoekstra did not think it would.

Ms. Vary asked if the containers were monitored if there was a reduction in abuse. Mr. Hoekstra stated that Waste Management had not had the same problems at monitored sites. He also noted that it reduced the number of commercial clients utilizing these containers, which is not the intent of the community collection sites.

Mr. Hulseberg moved to recommend renewal of the license, seconded by Ms. Tobias, and the motion carried unanimously.

RECYCLING ANNUAL REPORT

Christel Springmire, DeKalb County Health Department appeared before the Committee to answer any questions regarding the 2008 Solid Waste Annual Report. She noted that there had been a reduction in the rate of recycling but that the County was still operating above the State requirements. Ms. Springmire asserted that the numbers reported from previous years were suspect due to how they were generated but highlighted that the current method of data collection should be more accurate. She noted that with the reduction of construction material the percentages in types of recycled goods had spread out more equally than in years past. She also noted that the depressed market for recycled material.

Ms. Vary asked that if the rate of recycling was dropping if more people need to be better educated on the recycling options.

Ms. Grush informed the Committee that she concurred with Ms. Vary that public education to support recycling was important.

Ms. Vary noted that the operating hours of any recycling location needed to be convenient and consistent.

Mr. Hoekstra noted that some nonprofits, such as 4-H Clubs, are very successful at organizing recycling events.

Mr. Haines agreed that he supported more recycling options and stated that he hoped that the County and municipalities will be able to offer these services. He noted that the police station in Genoa was considered as one location for a recycling location, which would be able to offer 24 hour monitoring.

Ms. Springmire noted that recycling is often not available to individuals who live outside of town. Mr. Hoekstra was surprised by this and offered to look into the option.

The Committee thanked Ms. Springmire for her presentation.

DISCUSSION ITEM - Evergreen Village

Mr. Miller briefed the Committee that the cost-benefit analysis for the Evergreen Village Mitigation Project had been completed. The analysis shows that the project would exceed the 1.0 threshold, which is necessary for continued consideration for Federal mitigation funds. The anticipated total cost of buying the trailer park property (including the permanent buildings) and mobile homes, as well as paying for relocation assistance, demolition, and administrative costs, is estimated at \$5.65 million. Of this, the County would be responsible for 25%, or \$1.4 million. Mr. Miller explained that there were a couple of options the County is considering to find the local match through grants from the Illinois Emergency Management Agency (IEMA), the Illinois Department of Natural Resources, and the Illinois Department of Commerce and Economic Development. He noted that none of these matching funds was guaranteed; applications must be made to secure the funding, and funds must be available. Under the scenarios, the County's portion of the matching funds could be between \$120,000 and \$320,000. The final application to IEMA was to be submitted March 17, 2009. Without the 25% matching funds in hand, it unknown whether or not and when IEMA will forward the application to the Federal Emergency Management Agency (FEMA) for approval. It is also unknown how long it may take to obtain grants for the matching funds. Mr. Miller reminded the Committee that assistance may be necessary from elected officials. He concluded that the consultant will continue to work on this project with County staff, and staff will continue to update the Committee.

Mr. Haines informed the Committee that Evergreen Village was in Representative Manzullo's district.

DISCUSSION ITEM - Special Use Permit Information Dissemination

Mr. Miller presented a paragraph of text to the Committee that would be included with future business license applications. Mr. Miller had written the text at the request of the Committee due to the increase in businesses submitting for their Special Use Permit after beginning operations. The Committee agreed that the text should be included and directed staff to ask the County Clerk to include the information.

The next meeting of the Planning and Zoning Committee is scheduled for April 1, 2009 at 5:30pm in the Jenkins Auditorium at Kishwaukee College in Malta. The Planning and Zoning Committee is also scheduled to meet April 22, 2009 at 7:00pm in the Conference Room East.

ADJOURNMENT

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

Respectfully submitted,

**Kenneth Andersen
Planning and Zoning Committee Chairman**

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