

Minutes of the Land Use and Development Committee

The Land Use and Development Committee of the McLean County Board met on Thursday, January 4, 2007 at 4:45 p.m. in Room 400, Government Center, 115 E. Washington Street, Bloomington, Illinois.

Members Present: Chairman Gordon, Members Caisley, Rackauskas and Ahart

Members Absent: Member Baggett and Segobiano

Other Board Members Present: None

Staff Present: Mr. John Zeunik, County Administrator;
Ms. Christine Northcutt, Recording Secretary,
County Administrator's Office

Department Heads/
Elected Officials
Present: Mr. Phil Dick, Director, Building and Zoning

Others Present: Mr. Jeff Tracy, Project Manager, County Highway Department; Mr. Mike Behary, County Planner; Building and Zoning; Mr. John Hendershott, Environmental Health Protection Program Supervisor; Mr. John Atherton, Applicant; Mr. Duane Yockey, Engineer, Lewis, Yockey & Brown; Mr. Frank Miles, Attorney representing Mr. Atherton; Mr. Brad Long

Chairman Gordon called the meeting to order at 4:51 p.m. Chairman Gordon stated that the first order of business is consideration of the December 7, 2006 minutes. Hearing no additions or corrections, he placed the minutes of the December 7, 2006 Land Use and Development Committee meeting on file as submitted.

Chairman Gordon presented the bills from December, 2006 which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The prepaid total and the fund total is \$18,040.80. He asked for a motion to approve the bills.

Motion by Ahart/Rackauskas to recommend approval of the November, 2006 bills as presented by the County Auditor. Motion carried.

Chairman Gordon stated that the first item for action is a public hearing for file number S-06-28. Chairman Gordon declared the public hearing open at 4:52 p.m. Chairman Gordon asked Mr. Dick to present this item to the Committee.

Mr. Phil Dick, Director, Building and Zoning, stated this is a request for approval of a preliminary plan for 12 residential lots and two out lots in the Indian Springs Subdivision Phase II which is located in Cheneys Grove Township immediately west of the 3700 East Road, immediately south of the Indian Springs Subdivision and approximately 1/3 mile north of the 1000 North Road. Mr. Dick advised the Committee that this public hearing was continued from the December 7th meeting of the Land Use Committee. Notice of this public hearing was published in the November 18, 2006 issue of *The Pantagraph*.

Mr. Dick informed the Committee that the proposed subdivision is 12 lots. Lots 1 - 5 are being proposed to be rezoned to the R-2 two-family residents' districts. The Zoning Board of Appeals (ZBA) has recommended approval to rezone those 5 lots on December 5th. That matter will go before the County Board at the same time as the recommendation for this preliminary plan. This parcel is 17.25 acres. The County Health Department has some concerns which are addressed in a letter that was included in the Committee's agenda packet. Mr. John Hendershott, Environmental Health Protection Program Supervisor, Health Department is here to discuss his concerns. The County Highway Department has reviewed the plan and has indicated that the County's Subdivision Ordinance requires curb and gutter rather than rural cross section with ditches. That is the only waiver that the applicant is requesting. The applicant has proposed to build an asphalt street with rural cross sections. Mr. Paul Bottles, Cheneys Grove Road Commissioner, indicates that he is supportive of the waiver. Mr. Dick asked Mr. Hendershott to inform the Committee of the Health Department's concerns.

Mr. Hendershott informed the Committee that the Health Department has the following concerns:

1. The Applicant must submit a "Developer's Proposed Method for Private Sewage Disposal". He has submitted one in the past, but because of the re-zoning issue, he was asked to submit another. That has not been received.
2. The Applicant must submit a copy of the subdivision covenants. That was not received until today. Mr. Hendershott was out at a meeting until late this afternoon and has not had a chance to review the covenants.

Chairman Gordon thanked Mr. Dick and Mr. Hendershott for their presentations. He invited the applicant and his representatives to address the Committee. He asked them to introduce themselves for the record. Mr. Frank Miles, Attorney for the Applicant, Mr. John Atherton, Applicant and Mr. Duane Yockey, Engineer, Lewis, Yockey & Brown introduced themselves to the Committee.

Mr. Miles informed the Committee that Mr. Atherton submitted a similar plan to the Committee approximately a year ago. At that time, he was proposing rural cross section street with an A-3 or oil and chip street. The Land Use Committee was willing to recommend approval of the Subdivision *without* the waiver for the A-3 surface and rural cross sections. The County Board approved the same. Presently, Mr. Atherton has revised his plans and they are now before the Committee for approval. These plans show a bituminous (or asphalt) surface, but no curb and gutter. This is a compromise between the two positions.

Mr. Miles stated that he and Mr. Atherton met with Mr. Hendershott. Mr. Miles stated that he has assured Mr. Hendershott that the covenants provide a vehicle to maintain a septic system if duplexes are built on the R-2 zoned lot. The covenants state that if there are multiple owners, they will share equally in the cost of maintenance of the septic systems. If one of the owners refuses to pay for their share of the cost, either owner can have the repairs done and place a lien against the other person's property to recoup their costs. The covenants that have been submitted address that issue because this was Mr. Hendershott's principle concern. Mr. Miles stated that he understands that neither Mr. Hendershott nor Mr. Dick have had a chance to review the covenants. They were submitted shortly after the initial meeting with Mr. Hendershott and were most likely delayed in the holiday mail.

Mr. Miles advised the Committee that this is not a deed out townhouse situation. These duplexes will either be owned by a single owner with one side rented or they will have to be submitted to the Condominium Property Act. If and when they are submitted to the Condominium Property Act, the covenants can become part of the declaration that creates a two unit condominium and, therefore, will be memorialized before anyone purchases any land.

Mr. Miles stated that there were some people present who spoke in opposition of this project. Their key concerns seemed to be as follows:

1. There were concerns about the competence of the developer to undertake a subdivision such as this.
2. There were concerns regarding this development being compatible with the existing Indian Springs.
3. There were concerns regarding ensuring that promises made to keep the subdivisions compatible are memorialized.

Mr. Miles stated that he patterned the covenants from the existing Indian Springs covenants. If you compare the two, you will find that they are practically identical. There are a few added items in the proposed Indian Springs II Subdivision that are not in the existing Indian Springs covenants, such as the provision about shared septic systems and a detailed provision about shared wells. There is also a possibility of five duplexes in Indian Springs II. Mr. Miles stated that he would be happy to address any questions.

Chairman Gordon asked if there are any comments to be made from members of the County Staff. Hearing none, he asked if there were any questions from members of the Committee. Mr. Caisley asked what is the purposes of the two out lots. Mr. Yockey responded that both out lots are used for storm water detention purposes.

Ms. Rackauskas stated that the letter from Mr. Tom Anderson, Director of Environmental Health, to Mr. Atherton states that "If duplex units are developed, individual septic systems will be required for each unit." She asked if the applicant is assuming that the duplexes will be owned by a single owner. Mr. Hendershott responded that the County Code states, "The use of a private sewage system to serve more than one property is prohibited except where a common property is provided under joint ownership of users." Therefore, a duplex can use a shared septic system, if the system is placed in a common area under a legal covenant. Mr. Miles stated that he did see the line that Ms. Rackauskas refers to and he was confused at first as well. The letter was sent to Mr. Atherton before the covenants were received.

Mr. Caisley asked if the covenants provide that there must be a condominium if there is not common ownership. Mr. Miles responded that is correct. The only way you can separate one of these lots is through the condominium form of ownership. They are not being platted as a deed out townhouse with two separate lots where the lot line runs down the center of the duplex.

Ms. Rackauskas asked why isn't the applicant developing these as condominiums. Mr. Miles responded that it was assumed that most of the duplexes will be owned by a single owner. Mr. Miles stated that if the Land Use Committee and the County Board would rather these duplexes to be built as condominiums that could certainly be researched.

Mr. Caisley asked if the lots 1-5 are large enough to have two separate septic fields. Mr. Yockey responded that the lots are large enough to have a septic tank, a seepage field and a reserve seepage field. Mr. Caisley asked if the land has good percolation. Mr. Yockey responded that some of the area is good and some of it is marginal. That is the reason that the Health Department requested one-acre lots. Typically, the County Code allows half-acre lots. The lots in the existing Indian Springs Subdivision are half-acre lots.

Mr. Miles added that is part of the reason that the duplexes were proposed. It was to get the density of the Subdivision back up toward the 17 originally proposed lots.

Ms. Rackauskas asked if it was better from an engineering stand point to have two septic systems or one septic system. Mr. Yockey responded that it depends on the specific case, but his personal opinion would be that it would be more efficient to have one. If you have two you are chopping up the ground all over the lot.

Ms. Rackauskas asked Mr. Hendershott how much time he would need to review the covenants. Mr. Hendershott responded he will need a day or two to review the covenants.

Chairman Gordon asked if there are any other questions for the applicant or the applicant's representatives. Hearing none, he stated that having only four of the six Members of the Committee present along with the fact that Mr. Hendershott has not had time to review the covenants, the public hearing may have to be continued yet again. If this were March and the start of the construction season, the situation would be worse. Chairman Gordon asked the Committee if they would agree with a continuance. Ms. Ahart asked if the public hearing could be completed today so that the applicant and the members of the public would not be inconvenienced. She asked Mr. Atherton if a continuance would interrupt his schedule. Mr. Atherton replied that a continuance would not hinder his construction schedule.

Ms. Rackauskas stated that she is very pleased with the dialogue and the changes that have been made to the preliminary plan, but she would not feel comfortable acting on this proposal until the Health Department has time to review the covenants thoroughly.

Chairman Gordon stated that he agreed with Ms. Ahart and Ms. Rackauskas. He noted that the Committee will hear all testimony today and will likely continue the public hearing until the next meeting.

Mr. Caisley stated that the Committee has been informed that the covenants were patterned after the original Indian Springs Subdivision, therefore, extreme scrutiny with respect to the covenants should not be required. Mr. Caisley stated that there are people present who wish to testify and made an effort to be here at the meeting this evening. He feels the Committee should listen to the evidence presented, close the hearing and have a Stand-Up Committee meeting to make a decision on this preliminary plan.

Chairman Gordon stated that he is concerned that the Committee is missing two members this evening and all of the evidence has not been reviewed, therefore, he thinks it would be best to hold this over until the next regularly scheduled Land Use Committee meeting.

Ms. Rackauskas stated that the applicant has indicated that this would not be a hardship for him, so she feels it would be best not to rush the process.

Chairman Gordon asked if there were any other questions from any members of the Committee. Hearing none, he asked if there were other parties interested in the case who wish to be heard.

Mr. Brad Long introduced himself to the Committee. Mr. Long stated that he has seen three different versions of the Indian Springs Phase II Development proposal in the last 6 -8 months. The current proposal has 12 total lots with two out lots. Lots 1 - 5 are zoned R-2, which allows for multifamily dwellings. The remaining seven lots are being developed as R-1. He asked if that is correct. Mr. Dick responded that the ZBA has recommended approval of the R-2 zoning. It has not gone to the County Board yet. Mr. Long asked if the proposed duplexes could be built and owned by the developer and perpetually rented out under short term rental agreements. Mr. Dick responded that any dwelling could be rented. Mr. Long asked if the Committee could place any restrictions on the whether the proposed duplexes could be rented. Mr. Dick stated that is not a question for this Committee.

Mr. Long stated that his point is that there are not any rental properties currently located within the existing Indian Springs Subdivision and that situation would be less than desirable. He asked if the Committee could place conditions on this proposal. Chairman Gordon responded that he does not recall the County Board acting hastily on any amendments or conditions to any items that have been approved in the past.

Mr. Long stated that in another matter, with the current housing slump and a near record surplus of affordable housing on the market, what is driving the need to build ten R-2 units in a traditional R-1 Subdivision. Chairman Gordon responded that is not a matter that comes under the terms and conditions of the Subdivision Ordinance.

Mr. Long stated that he and other residents are confused about what impact the proposed development will have on existing streets and street lights. The proposal is asking for a waiver on the curb and gutter requirements. He asked if the waiver is only being sought for the extension portion of Arrowhead Trail being developed to the R-2 developments or is the waiver for the entire proposed

development? Additionally, are there any plans to apply the proposed asphalt surfacing to the existing portion of Arrowhead Trail that he is looking to extend? How will the use of streets and or street lights be separated between the two subdivisions? Will Dream Catcher Drive be built first to support the construction traffic?

Mr. Dick responded that construction traffic will not go through the existing streets. It will be routed through Dream Catcher Drive. There is no intent to rebuild the existing streets in the current Indian Springs Subdivision. The Subdivision Ordinance does not require street lights. If they are installed, they would be on private property and should be maintained by the homeowners. The Township Road Commissioner has signed off on the proposed asphalt streets. Mr. Jeff Tracy, Project Manager, Highway Department added that the Township Road Commissioner will decide whether to accept the streets in the proposed subdivision upon completion.

Mr. Long stated that out lot "B" does not seem to serve as a drainage or detention basin. Can the applicant's engineer explain how it provides drainage? Will the proposed drainage lay out for Phase II increase the surface water volume and flow into the existing Indian Springs Subdivision?

Mr. Long asked if the Committee if they have ever selectively waived their own Ordinance and approved an exemption to the curb and gutter requirement for any Subdivision since it was adopted. Chairman Gordon stated that he does not believe that the Committee has ever recommended such a waiver.

In closing, Mr. Long stated that this proposed subdivision began as a well-intentioned plan and has evolved into a plan to develop 10 duplex units in an area that demonstrates no current need. There is no clear plan or time line for the remaining R-1 development. There are problems with poor perc and leach field saturation in the existing Indian Springs Subdivision. Drainage is the core concern of the majority of the existing Indian Springs Subdivision. Mr. Long distributed photographs taken just last week which illustrate the impact that less than one inch of rain has on the existing drainage areas.

Mr. Long stated that because the existing subdivision is plagued with drainage issues, amplifying surface water flows to these areas will do nothing but exacerbate these problems. Curb and gutter with storm sewer discharge directly into the Sangamon River or the Comanche Lane culvert would alleviate many of these concerns. He asked that the Committee recommend approval of a R-1 single family development with curb and gutter. He thanked the Committee for their time.

Chairman Gordon thanked Mr. Long and asked if there were any other interested parties who wish to speak. Hearing none, he recalled the applicant and his representatives to respond to the questions raised by Mr. Long.

Mr. Miles stated that there has only been one version of this plan since he has begun representing Mr. Atherton, which is before the Land Use Committee today. The reason this plan is different than the earlier plans is there was an effort to accommodate the concerns of objectors including Mr. Long. Mr. Miles stated that at the conclusion of the ZBA meeting he invited Mr. Long to call him with any questions or concerns that he or his neighbors may have. Mr. Long has not done so.

The R-2 zoning district does give the developer the right to build duplexes on those five lots, but not an obligation to do so. It may be that one or more of those lots will end up being used as a single-family residence site.

Mr. Miles stated that as far as there being a housing slump, that is Mr. Atherton's risk and not the County's concern.

As far as the streets, clearly the two subdivisions will be separate. Mr. Atherton will be responsible for the streets in the proposed subdivision. He will not be responsible for the streets in the existing subdivision.

The reason that the covenants were patterned after the existing Indian Spring Subdivision is because there is nothing in the existing covenants that restricts the rental of those properties. Mr. Miles stated that he would let Mr. Yockey address the drainage issue. He reminded the Committee that drainage has to be discharged at the point where it naturally discharges. That is what this proposed subdivision does.

Mr. Yockey stated that he will address the questions regarding drainage. Out lot "B" is a dry storm water detention area. It serves what drains off the back yards of lots 2 - 4. There was a question with regard to the amount of drainage from this development. The County Code requires that storm water detention be put in for residential subdivisions. Part of that requirement is that the rate of runoff, after the development, is no greater than the rate of run off before the development. Typically when storm water detention basins are installed, the rate of the run off is less after the development.

Mr. Yockey stated that if curb and gutter streets with storm sewers are installed, there is more run off for several reasons. The streets are wider so the water gets to the storm water detentions more quickly. Therefore, there is a higher intensity of runoff. The reason that it would be advantageous to go with rural cross sections rather than curb and gutter is because you reduce the amount of runoff. The water goes to the ditches or seeps into the ground.

Mr. Miles informed the Committee that he would suggest that the Committee and the County Board review the revised plan. He feels that this preliminary plan is a better plan and asks for a favorable recommendation.

Mr. Miles informed the Committee that he had a prior commitment and that he must leave. He thanked the Committee for their consideration.

****Mr. Miles left the meeting at 5:52 p.m.**

Chairman Gordon asked if there were additional comments. Mr. Rackauskas asked if there was a written provision which will protect the residents and roads of Indian Springs from the proposed construction from coming through their streets. Mr. Tracy responded that if the road commissioner so chooses he can enforce the posted weight limit on the roads forcing traffic to use other roads. Ms. Rackauskas asked if there could be a written statement protecting the existing roads. Mr. Tracy responded that he did not think that you can ban any vehicle from driving on a public road. Mr. Yockey responded that if the preliminary plan is approved, he can include specific language in the construction plans that direct construction traffic to travel on specific roads. That is standard operating procedure if there are issues regarding protecting surrounding roadways.

Mr. Caisley asked Mr. Yockey if the proposed covenants and homeowner's association will be completely separate from the existing Indian Springs Subdivision. Mr. Yockey stated that the covenants have been patterned from the existing covenants, but are totally separate from the existing homeowner's Association.

Chairman Gordon asked if there would be a problem where an asphalt road and an oil and chip road met. Mr. Yockey responded that they will have to "transition" to the existing roads, so they will have to taper the asphalt into the existing road.

Chairman Gordon stated that the Committee has two options at this time. They can continue the public hearing until the next regularly scheduled meeting. Or the Committee can opt to close the public hearing now and meet at a Stand-Up Committee Meeting after Mr. Hendershott has had time to review the covenants. Perhaps, Mr. Segobiano and Mr. Baggett will be able to attend that meeting as well.

Ms. Rackauskas stated that would be a mistake because no one can ask questions when the public hearing has been closed. She stated that she prefers to hold the public hearing over until next month.

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Motion by Caisley/Ahart to recess the Public Hearing
for the limited purpose of considering the covenants.

Chairman Gordon asked Mr. Zeunik if that would be a “clean” procedural move. Mr. Zeunik responded that you cannot limit the scope of the questions from the Committee Members.

Ms. Rackauskas stated that the process does not need to be complicated. The Public Hearing should be continued to the next regularly scheduled Land Use Meeting.

Chairman Gordon asked Mr. Caisley if he would consider amending his motion so that the questions from other Committee Members would not be restricted at the next meeting. Mr. Caisley responded that the applicant has already expended the time and money to be here and be represented this evening.

Ms. Rackauskas stated there would be less legal ramifications if the Public Hearing was just continued.

Mr. Caisley withdrew his motion.

Chairman Gordon asked the Committee if they were comfortable with continuing the Public Hearing to February 1, 2007. The Committee agreed. Chairman Gordon thanked everyone who presented testimony.

Ms. Ahart asked Mr. Dick to remind the Committee when the ZBA will be holding the hearing on the wind farm. Mr. Dick responded that the public hearing for the proposed wind farm will be at 7:00 p.m. on January 16th at Heartland Community College in the Community Commons.

Chairman Gordon asked if there were any other comments or questions from the Committee. Hearing none, he adjourned the meeting at 6:08 p.m.

Respectfully submitted,

Christine Northcutt
Recording Secretary