

## Minutes of the Land Use and Development Committee

The Land Use and Development Committee of the McLean County Board met on November 4, 2004 at 4:45 p.m. in Room 400, Government Center, 115 E. Washington Street, Bloomington, Illinois.

Members Present: Chairman Gordon, Members Ahart, Segobiano, Cavallini, and Rackauskas

Members Absent: Member Kalapp

Other Board Members Present: Member Berglund

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 Department; Ms. Christine Brauer, Regional Planning Commission; Ms. Michelle Covi, Ecology Action Center; Mr. David Nesbit; Dr. Bruce Anderson; Mr. Chris Hauptman; Mr. Jerry Walheim

Chairman Gordon called the meeting to order at 4:46 p.m.

Chairman Gordon stated that the first order of business is the approval of the October 7, 2004 minutes.

Motion by Cavallini/Ahart to recommend approval of the October 7, 2004 minutes of the Land Use and Development Committee as presented.  
Motion carried.

Chairman Gordon presented the bills from October 31, 2004, which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The total is \$25,873.20, with the prepaid total being the same.

Motion by Cavallini/Ahart to recommend approval of the October 30, 2005 bills as presented by the County Auditor. Motion carried.

Chairman Gordon stated that there are two items for Committee action this evening. The first item is a request by Ms. Alice Gerjets for a waiver of preliminary plan requirements and a two-lot final subdivision plat for the Gerjets Subdivision. Chairman Gordon asked Mr. Phil Dick, Director, Building and Zoning to present this item to the Committee. Mr. Dick stated that this is a two-lot subdivision located in Towanda Township adjacent to the Lamplighter Subdivision. The waiver and the final plat are consistent with the Zoning and Subdivision Ordinances. The County Health Department has signed off on the existing septic system. The applicant has indicated that the Township Road Commissioner will sign off on the Plat Access Certificate when it is presented to him. The addition is along Towanda Barnes Road, but has access only to Lamplighter Street. Mr. Dick stated that Mr. Jerry Walheim representing the applicant is present this evening to answer any questions that the Committee may have.

Chairman Gordon asked if there were any questions from the Committee. Hearing none, Chairman Gordon called for a motion.

Motion by Segobiano/Ahart to recommend approval of a waiver of Preliminary Plan requirements and a two-lot final subdivision plat for the Gerjets Subdivision, File No. S-04-17. Motion carried.

Chairman Gordon informed the Committee that the next item is a request by Mr. Robert Lenz to reinstate the Preliminary Plan for the Wexford Hills Subdivision. Chairman Gordon asked Mr. Dick to present this item to the Committee. Mr. Dick stated that this property is located in Old Town Township. The Preliminary Plan was originally approved in January 2001. This proposed subdivision is adjacent to Dover Ridge Subdivision which is a larger lot subdivision. Mr. Dick informed the Committee that the Department of Building and Zoning would not allow any construction to begin on the proposed Wexford Hills Subdivision until the Environmental Protection Agency (EPA) approved the waste treatment system. Since that time, the Preliminary Plan for the Wexford Hills Subdivision has expired. Mr. Lenz is now requesting that the Preliminary Plan be reinstated.

Ms. Rackauskas asked if it is manpower or design that is holding up this process. Mr. Dick replied that it could be any number of things. Mr. Dick stated that there has been a public hearing, in which the public has expressed concerns. There is a delay at the EPA approving proposed waste treatment system for the subdivision. Mr. Dick provided the Committee with a copy of the original Preliminary Plan for the Wexford Hills Subdivision.

Mr. Segobiano asked why it has taken the EPA three years to approve this subdivision. Mr. Dick replied that he does not know why it has taken the EPA so long to approve this system. Mr. Segobiano asked why the Highway Department has not signed off on this request. Mr. Jeff Tracy, Project Manager, responded that he has been out of the office much of this week and has not had a chance to review this request. Mr. Tracy stated that the only comment that he would have is that he would like for the engineers to reaffirm that the collection lines shown in the original plat are still valid, because they have switched to the Orenco Septic System. Mr. Tracy informed the Committee that the EPA Permit process is a slow one. There is a comment period of 180 days during which the public is allowed to comment on a proposed subdivision. Mr. Tracy added that there have been retirements at the Illinois Environmental Protection Agency (IEPA) and the wheels just turn slowly.

Ms. Rackauskas stated that it is unreasonable to expect a developer to wait idly by until the EPA gets itself together and approves these requests.

Mr. Segobiano asked if this Preliminary Plan is proposed to be approved for an additional three years. Mr. Dick stated that staff has proposed that it be approved for an additional two years.

Ms. Rackauskas stated that she is not comfortable recommending approval for a Preliminary Plan that has not been recommended by all of the staff.

Chairman Gordon stated that this Committee has learned through other cases that have been presented to it that the IEPA only has four full time inspectors for this region. The inspectors for this region covers 19 Counties. In addition, routine inspections in this region can be expected to be completed within a year's time frame. Chairman Gordon stated that there are definite issues with personnel at the IEPA. Ms. Rackauskas replied that this is a consistent problem and the County needs to be proactive to get this resolved.

Mr. Dick stated that it has become more difficult to approve surface discharge sewage systems that are not municipal waste treatment systems. Mr. Dick stated that this may be a signal from the EPA to these developers to seek other sewage systems.

Chairman Gordon asked Mr. Dick if there is a possibility for the Committee to learn some additional information from the EPA as to why this has taken so long to be approved. Mr. Dick stated that it would be appropriate for the Committee to hold this item over until next month's Committee meeting. Mr. Dick stated that he was under the impression that Mr. Bob Lenz, the applicant's attorney, would be present at tonight's meeting. Ms. Ahart asked if the Committee could see a progress report showing what work has been done in the three years that this subdivision has been under construction. Ms. Rackauskas added that she would like to see the Highway Department's recommendation as well.

Motion by Cavallini/Rackauskas to postpone consideration of the reinstatement of the Preliminary Plan for the Wexford Hills Subdivision, File No. S-00-22, to the December 2, 2004 meeting of the Land Use and Development Committee until recommendation from all County staff has been received. Chairman Gordon stated that the Chair will vote. Motion carried.

Chairman Gordon stated that the first item for information is the quarterly solid waste report from the Ecology Action Center (EAC). Chairman Gordon invited Ms. Michelle Covi, Director, EAC to present this item to the Committee.

Ms. Covi informed the Committee that this is the first quarterly report on the new Solid Waste and Waste Reduction Education Program contract which began in July 2004. Ms. Covi informed the Committee that the EAC has had a productive and busy fall.

Ms. Covi stated that the EAC has presented programs to several schools in October. The EAC has also attended several festivals, the Cultural Festival in Bloomington and the Sugar Creek Arts Festival, and the Corn Festival in Normal. There was a very successful summer library program. The EAC publishes a newsletter for teachers. The EAC continues to work with the designers of the "Oh Rubbish" exhibit which will be located in the new *Children's Discovery Museum* in Normal. Ms. Covi noted that there was a tire collection event in conjunction with the IEPA at the Normal Public Works Yard. There were approximately 3,000 tires collected.

Chairman Gordon asked if there were any questions for Ms. Covi. There were no questions for Ms. Covi. Chairman Gordon thanked Ms. Covi for her report.

Chairman Gordon stated that the next item on the agenda is a discussion on Administrative Adjudication. Chairman Gordon introduced Mr. Matt Wahl, Director, Peoria County Planning and Zoning Department. Mr. Wahl is present at this evening's meeting to explain how Administrative Adjudication works in Peoria County.

Mr. Wahl stated that he has put together a copy of Peoria County's Ordinance Authorizing Administrative Adjudication of Ordinance Violations, copies of their Inoperable Vehicle Ordinance and Litter Ordinance. Mr. Wahl stated that in addition he has made copies of their case files. He noted that he has whited out violator's names and addresses for privacy as needed. Mr. Wahl asked Mr. Dick to hand out these copies. Mr. Wahl stated that the hearing officer program was set up very carefully with regard to their enforcement program. Mr. Wahl stated that he had been trying to direct their County Board, over the years, to reconsider their enforcement policies for the County. When he first became Director of the Department nine years ago, Mr. Wahl stated that the enforcement program was set up as a complaint based only enforcement program. Mr. Wahl stated that he has urged the Peoria County Board to evaluate the areas of the highest number of environmental violations and consider a different type of enforcement program in those areas. Fortunately, approximately 86% of Peoria County's violations occur in R2 or 1 and 2 family residential areas. These are primarily very densely populated areas. There are other things that affect those areas such as, income levels, rental vs. homeowners, etc. The Peoria County Board ultimately agreed to grant Mr. Wahl proactive enforcement in the R2 designated areas, the flood plain areas and the scenic highway areas. Mr. Wahl stated that four months after that action was taken, the Ordinance Authorizing Administrative Adjudication of Ordinance Violations was drafted and passed.

Mr. Wahl informed the Committee that the hearing officer program is difficult, at best, to start. Mr. Wahl stated that after it is started and moves along for a while, people begin to realize what is happening and the timeframes in which action is expected to happen regarding compliance deadlines and the process begins to move more smoothly. Mr. Wahl advised that the first year of the program was very difficult. There were 26 cases filed in for the first hearing and the hearing officer was severely overloaded. None of which were settled. The fines that were assessed and that can be assessed in accordance with State Statutes are \$500.00 per week for inoperable vehicles and \$500.00 per day, per violation, for litter. In summation, these cases can add up to thousands or hundreds of thousands of dollars. Mr. Wahl noted that it was found that their State's Attorney felt that it is ridiculous to fine a property owner a \$100,000.00 on a property that is only worth \$30,000.00, for example. The Peoria County Planning and Zoning Department settled on a \$150.00 fee for each appearance at the administrative review process. Mr. Wahl informed the Committee that a property owner will receive a letter notifying them that their property is in violation of the County Ordinance and that they have 30 days to bring their property into compliance. On the 31<sup>st</sup> or 32<sup>nd</sup> day after the notification, an additional inspection is done. If compliance is met, the property owner is not obligated to appear before the hearing officer and is not charged a fee or fine. If compliance has not been met, they are sent a 20-day notice to appear before the hearing officer. If they come in before the hearing officer and they have complied, they normally do not charge the \$150.00 hearing officer fee. If they have not complied at that time, the case will be continued to the next month. If the property owner appears twice, they are normally only charged the \$150.00 fee once at the end of the process, unless they are making absolutely no progress. On the third appearance, if they have not complied, the hearing officer will start assessing fines, and they will be significant.

Mr. Wahl informed the Committee that before this program was started, the average time that it took to clear up a violation was 181 days. Now the average time is 51 days to clear up a violation. Mr. Wahl stated that people now realize that the Planning and Zoning Department has some legal recourse.

Mr. Wahl informed the Committee that, overall the program has been very successful. The fines that are collected come directly to the Planning and Zoning Department. Mr. Wahl stated that there are four large cases being litigated through the State's Attorney's Office. Two of which have settled via default judgement because the violator did not appear in court. The State's Attorney's Office will proceed with taking liens against the property in these cases. Mr. Wahl stated that he is not certain about the outcome of these cases.

Mr. Wahl stated that the Department of Planning and Zoning handles all of the work associated with this process. Mr. Wahl explained that his Zoning Enforcement Officers handle the inspections, send out the initial violation letters, and the notices to appear. Mr. Cavallini asked who is Peoria County's Hearing Officer. Mr. Wahl replied that the gentleman who has been assigned as the hearing officer is the Assistant County Administrator for Peoria County. Mr. Wahl stated that the State's Attorney's Office had informed them that they could not have anyone from the Department of Planning and Zoning act as the Hearing Officer. It would present a conflict of interest. Mr. Wahl stated that the individual does not have to have any special qualifications. He noted that nearly any individual can look at pictures and evidence presented and make a judgment as to whether a property is in violation of the County Ordinance.

Mr. Cavallini asked how the overall compliance percentage has changed since the inception of the program. Mr. Wahl responded that before the program the office saw about 75% compliance and with the program there is nearly 90% compliance. In addition, the number of days spent with each violation is cut drastically.

Mr. Segobiano asked what is the budget for the program. Mr. Wahl responded that his department handles everything. The gentleman who is the Hearing Officer is a County employee. County employees are also responsible for the inspections and for preparing the letters that are sent out to violators. Mr. Wahl explained that Peoria County runs this program with no additional funds and no additional personnel. Mr. Wahl stated that if you have enforcement personnel and you are very thorough in the reports, you can probably get by without hiring additional staff. Mr. Segobiano asked how much Peoria County projects each year for revenue. Mr. Wahl responded they project a very low number such as \$1,000.00 per year. Ms. Rackauskas asked how much do they actually receive annually. Mr. Wahl replied that they have collected approximately \$5,700.00 in the three years that the program has been running. Mr. Wahl noted that the four major cases that have been forwarded to the State's Attorney's Office have not been settled.

Mr. John Zeunik, County Administrator asked what happens when the hearing officer orders a fine and the individual refuses to pay the fine. Mr. Wahl stated that the case will then be referred to the State's Attorney's Office. Mr. Wahl stated that his office will sometimes offer special terms, such as accepting payments over a six-month period. Mr. Zeunik asked what kind of turn around time does his office see when referring these cases to their State's Attorney's Office. Mr. Wahl replied that it takes around 10 months to a year to see any results from the State's Attorney's Office. Mr. Wahl stated that it is no quicker than it was before his office put Administrative Adjudication into place in Peoria County. Mr. Wahl did note that it has cut the amount of cases that are forwarded to the State's Attorney's Office.

Mr. Dick asked how often the Hearing Officer hears cases. Mr. Wahl responded that Peoria County holds its Administrative Review once a month.

Mr. Zeunik asked if Peoria County has a court reporter or any type of transcript from these hearings. Mr. Wahl replied that the order that is issued as a result of the hearing stands as a legal transcript for the meeting. Mr. Wahl stated that there will always be an order written unless compliance is reached. It may be a continuance or a fine, etc. Mr. Wahl stated that courts have upheld the orders as the official record. Mr. Zeunik asked if they swear their witnesses in. Mr. Wahl stated that they do swear the witnesses in, but it is a pretty informal process. Mr. Wahl stressed the importance of meticulous record keeping. He noted that meticulous record keeping by the Zoning Enforcement Officer is necessary for these matters to go before the courts.

Ms. Rackauskas asked if volunteers could be used as the Hearing Officer. Mr. Wahl stated that it would probably be difficult to utilize volunteers. Mr. Dick asked how many hours per month does the Hearing Officer have to put in. Mr. Wahl stated it is probably 2-3 hours per month.

Chairman Gordon thanked Mr. Wahl for his time and insightful presentation to the Committee.

Mr. Segobiano stated that he must leave the meeting at 6:00 p.m. and asked if the Committee could move forward to Mr. Chris Hauptman's concerns about the Prairieland Subdivision. Chairman Gordon invited Mr. Hauptman to speak to the Committee. Mr. Hauptman thanked the Board, Mr. Zeunik and the County Staff for allowing him to be placed on the agenda. Mr. Hauptman stated that he just handed two letters to the Committee written by concerned citizens regarding the Prairieland Subdivision and a list of questions that these citizens would like to have answered. Mr. Hauptman stated that one of the things that he and the other citizens are concerned about are the inoperable vehicles that sit on Mr. Nesbit's construction site constantly. Mr. Hauptman stated that another of his concerns is what happens to this proposed subdivision when Mr. Nesbit's Preliminary Plan expires. Mr. Hauptman asked the Committee if they will reinstate another Preliminary Plan. Mr. Haputman stated that he and the other citizens want the subdivision to be completed. Mr. Hauptman stated that it seems that this proposed subdivision is riddled with problems. Mr. Hauptman stated that Kings Mill Creek is polluted as a result of Mr. Nesbit's work. Mr. Hauptman stated that he and these other concerned citizens just want answers. Mr. Segobiano stated that he has to leave the meeting for another engagement, but he would suggest that staff look over the questions presented by Mr. Hauptman and prepare written answers for the Committee's review at the next meeting.

\*\*Mr. Segobiano left the meeting at 6:00 p.m.

Chairman Gordon stated that Mr. Dick and Mr. Zeunik have indicated that they will review the questions as presented by the concerned citizens and provide answers.

Ms. Rackauskas thanked Mr. Hauptman for presenting his concerns. Ms. Rackauskas noted that she wanted to move on to the progress report on Prairieland Subdivision. Ms. Rackauskas asked if Mr. Nesbit's sewer system is being certified and tested as required. Mr. Tracy responded that the system has been tested and a letter was sent to the IEPA by Randolph and Associates stating that the manholes passed a vacuum test and that the sewer lines passed a pressure test. Mr. Tracy stated that he does not know if this system has been certified yet. Mr. Tracy stated that given the rate at which the IEPA moves, it probably has not been certified. Mr. Tracy stated that if they find everything in compliance, they will issue an operator's permit for the system. Because the recirculating sand filter is not installed, the IEPA will probably not issue the operator's permit. Ms. Rackauskas asked if she was correct in her assumption that Mr. Nesbit cannot move on with the next phase of construction until this system has been certified. Mr. Tracy responded that is incorrect. Mr. Tracy stated that the County cannot tell the developer in what order his operations can occur. Mr. Tracy informed the Committee that the County is more or less responsible for reacting to what action the developer is taking. If and when Mr. Nesbit is ready to do the grading for the streets, the County will go to the job site and perform a test roll. If the street passes a test roll, the developer can pour the streets at any time. Mr. Tracy stated, in summation, the County is not the construction manager, it is the construction inspector. Mr. Tracy stated that if something does not meet the County's requirements, it is not passed. The County will ask a developer to rework that particular project and resubmit it for inspection.

Mr. Dick asked Mr. Tracy if the residents of Apollo Acres ever consulted him, prior to the inception of Prairieland, regarding drainage problems. Mr. Tracy stated that the residents were reporting major drainage problems in that area some time ago. Chairman Gordon asked him approximately how long ago that was. Mr. Tracy responded it was probably in 1993 or 1994. Mr. Dick asked what specifically they were having problems with. Mr. Tracy responded it had to do with the slopes of the railroad embankment were sloughing off and filling up the drainage ditch. Mr. Tracy added that there were also problems with the farm fields draining down to the drainage ditch. There was a lot of siltation in that ditch. The road commissioner proposed to try and clean up the ditch, but could not get approval from all of the neighbors along the ditch, so the project was dropped.

Ms. Rackauskas asked if the problems are the same as they were back then. Mr. Tracy stated that in his opinion they are very similar because the pipe that

Minutes of the Land Use and Development Committee Meeting  
November 4, 2004  
Page Ten

runs under the railroad embankment is the same pipe that has been there for many years.

Mr. Tracy stated that he has never been present when Mr. Nesbit has opened up the dam that released the water. Mr. Tracy stated that he did go to the site a couple of hours after Mr. Nesbit had released the dam and the water flow through the pipe was not significant.

Ms. Rackauskas asked how long ago the sewer lines had been tested. Mr. Tracy stated that he was unsure, but it has been a while ago. Ms. Rackauskas asked if they could be retested to be certain that they are still operational. Mr. Dick added that there has been some vandalism on Mr. Nesbit's site and that this could have added to any problems that Mr. Nesbit is having. Mr. Tracy stated that he would be happy to see that the lines were retested. Chairman Gordon asked if Mr. Tracy would include this information on his next progress report. Mr. Tracy responded that he would be happy to do so.

Chairman Gordon asked if there were any other items to come before the Committee. Hearing none, Chairman Gordon stated that he would entertain a motion to adjourn the meeting.

Motion by Cavallini/Rackauskas to adjourn the  
Meeting of the Land Use and Development Committee  
at 6:38 p.m. Motion carried.

Respectfully submitted,

Christine Northcutt  
Recording Secretary

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