

Minutes of a Special Land Use and Development Committee

The Land Use and Development Committee of the McLean County Board met on September 21, 2004 at 10:00 a.m. or immediately following the County Board Meeting 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: County Board Chairman Sweeney, Members Berglund, Hoselton, Sorensen

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; Mr. Bill Yoder, State's Attorney; Mr. Eric Ruud, First Assistant State's Attorney; Mr. Brian Hug, Assistant State's Attorney, Mr. Michael Behary, County Planner, Building and Zoning; Mr. John Hamann Zoning Enforcement Officer; Building and Zoning; Mr. Tom Anderson, Sanitarian, Health Department; Mr. Jeff Tracy, Project Manager, County Highway Department

Others Present: Ms. Christine Brauer, Regional Planning Commission; Ms. Sally Rudolph, Chair, Zoning Board of Appeals

Chairman Gordon called the meeting to order at 11:00 a.m. Chairman Gordon informed the Committee, that this is not a regular meeting. This is a work-session pertaining to zoning and subdivision enforcement. Chairman Gordon announced that there will be five segments of this presentation beginning with Mr. Brian Hug, Assistant State's Attorney, addressing responsibilities and authority to regulate by Members of the County Board, the Zoning Board of Appeals (ZBA) and staff. Chairman Gordon invited Mr. Hug to begin his presentation. Chairman Gordon welcomed all of the Land Use Committee Members and Ms. Sally Rudolph, Chair, ZBA.

Mr. Hug informed the Committee that he would begin his presentation with the role of the Members of the Land Use Committee and the ZBA. Mr. Hug stated that it appears that there may be a misperception of the Committee's responsibilities.

Mr. Hug informed the Committee that the County is not home-rule. That creates a definite limitation on what can be done by either Committee in the areas of zoning and land use. The County is bound by the Statutes set forth by the State of Illinois. The two statutes that impact the County the most are the Zoning Statute and the Land Subdivision Statute.

Mr. Hug stated that the Zoning rules are set forth by Statute. This statute regulates the number of members on the Zoning Board and their responsibilities. Illinois statutes authorize the County to enact a County Zoning Ordinance. For both the Zoning Ordinance and Subdivision Ordinance, the jurisdiction is inside the boundaries of the County of McLean and outside the limits of cities, villages and incorporated towns. Mr. Hug noted that this is not the issue that confuses people. The overlapping jurisdiction within 1½ miles of an incorporated municipality is not a zoning jurisdiction; it is a subdivision jurisdiction. This is the issue that seems to confuse some members.

Mr. Hug stated that he would outline the duties of the ZBA.

- The ZBA hears administrative appeals of decisions of the Zoning Director. If there is an issue that goes to the ZBA, those are decided by administrative review. If the decision of the ZBA is appealed, then the issue is decided in court.
- The ZBA grants initial approval for variances. The County Board has final approval on all variances.
- The ZBA grants initial approval for Special Use permits. Special Use regulations are set up by Statute and require the County Board approval.
- The ZBA is required to make decisions on text and map amendments.

Mr. Hug stated that he would next outline the ZBA's limitations.

- The ZBA is not an Oversight Committee for the Department of Building and Zoning.
- The ZBA can apply conditions to special uses and planned urban developments. The ZBA may not apply conditions to re-zonings.
- The ZBA does not have any authority over subdivisions.

Mr. Hug stated that he would move on to the Land Use Committee. The difference between the Land Use Committee and the ZBA is that the ZBA is created by State Statute. The Land Use Committee is created by County Ordinance.

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Mr. Hug stated that he would outline the duties of the Land Use Committee.

- The Land Use Committee is the Oversight Committee for the Department of Building and Zoning.
 1. The Land Use Committee must keep informed about the Department of Building and Zoning's budget.
 2. Reviews requests for staffing changes.
 3. The Committee keeps informed about the Department of Building and Zoning Department's activities.
- General supervision over matters concerning maps, plats and subdivision.
- Conduct hearings under the Land Subdivision Ordinance.
- Liaison with Regional Planning Commission, ZBA, Soil Conservation and Cooperative extension services.
- Review and recommend long-range comprehensive plan.
- Review and recommend environment, zoning, building, subdivision, mobile home, and nuisance ordinances and resolutions.
- Supervise licensing raffles, massage parlors and racetracks.
- Act as members of the Regional Pollution Control Site Hearing Committee.

Mr. Hug stated that he would outline the limitations of the Land Use Committee.

- No oversight of ZBA.
- No authority to zone property.
- The Subdivision Ordinance is not punitive.

Mr. Hug informed the Committee that although the Land Use Committee can recommend approval of a subdivision, the Subdivision Ordinance is not punitive. That means that it does not carry any penalties. Mr. Hug stated that can create problems. Normally, a developer's economic interest motivates the developer to finish a subdivision.

Mr. Hug stated that even though a Committee Member may get frustrated with some of the activity that takes place in a particular situation, it may or may not lie within the bounds of your responsibility. Both the Land Use Committee and the ZBA are Committees which make decisions based solely upon the evidence that is presented to them. It is not the responsibility of the Committee Members to go out to a proposed development to gather evidence. If Committee Members do gather such information and use that information to make a decision, that evidence must be put into the record. That Committee Member must become a witness and will be subject to cross examination. In addition, when members of the Committee are contacted by the public about a pending situation, they should remember that the information they are given is unverified and should not be

considered when making a decision. Both the ZBA Members and the Land Use Committee Members are in quasi-judicial positions. Mr. Hug informed the Committee that Committee Members are not only representing members of the public, but they are following the rules set forth by State Statute and County Ordinance.

Chairman Gordon thanked Mr. Hug for his portion of the presentation. Chairman Gordon announced that the next portion of the presentation is the overview of existing zoning enforcement, by Mr. John Hamann, Zoning Enforcement Officer, Building and Zoning.

Mr. Hamann informed the Committee that people often wonder how the Department of Building and Zoning is made aware of violations. He explained that around 50% of the complaints come from concerned members of the public who call in and file an complaint. The other 50% come from periodic drive by inspections done by the Zoning Enforcement Officer. Mr. Hamann informed the Committee that there are several different types of violations. Approximately 70% of the violations that the Building and Zoning Department deals with are routine violations. Moderate violations make up about 25%, and severe are only 5%.

- Routine violations are violations such as:
 1. Inoperable vehicles on private property.
 2. Sheds, fences or pools being constructed without a permit.
- Moderate violations are violations such as:
 1. Businesses doing business in an incorrectly zoned area.
 2. Failure to follow Special Use requirements.
 3. Failure to set aside a parcel.
- Severe violations are violations such as:
 1. Illegal junkyards.
 2. Confrontational violators (i.e. violators who refuse to comply with the law).

Mr. Hamann stated that in 70% of violation cases, property owners are not informed and are willing to comply as quickly as possible. Approximately 25% of property owners are uninformed, but hesitant to comply. They need some extra urging to comply. Finally, the last 5% are property owners who are aware of the law, but simply refuse to comply.

Mr. Hamann stated that when a complaint is filed, the Department of Building and Zoning starts a file. A Zoning Enforcement Officer drives by the property to verify that there is a violation. After the violation has been verified, the Zoning Enforcement Officer checks the Department's records to see if this is a repeat offender. The Zoning Enforcement Officer then tries to contact the property owner by phone and ask if they are aware that there is a violation and if they would help to resolve the violation. Mr. Hamann stated that if that does not produce results, he then sends a violation notice in writing. After sending several letters with no results, he turns the case over to Mr. Hug to pursue. Mr. Cavallini asked what happens after a case is turned over to Mr. Hug to pursue. Mr. Hug responded that depends upon the other demands in his office. Mr. Hug stated that the County has 23 other departments and there are only two attorneys in the civil division. Mr. Hug noted that when he has the time, he works on zoning issues, but there are often more pressing issues to deal with. Mr. Hug stated that if and when zoning ordinance violations are taken to court, the property owner is only assessed a minor fine. Often times, even when assessed a fine, these property owners are either unwilling or unable to pay the fine. They then have to be taken back to court and be ordered to pay. Ultimately, an injunction is filled in order to stop them from violating the County Code. Mr. Hamann stated that is exactly why this meeting is taking place. There may be a better way to deal with this issue.

Mr. Hamann proceeded to show the Committee photos of examples of routine, moderate, and severe violations. Mr. Hamann explained that some of these violations have been ongoing for many, many years.

Chairman Gordon thanked Mr. Hamann for his presentation. Chairman Gordon stated that the next portion of the presentation is standards to approve special uses and the enforcement of conditions of special uses. Mr. Phil Dick, Director, Building and Zoning, stated that the primary difference between zoning cases and subdivision cases are zoning cases have to do with how the property is used and subdivision cases have to do with how you can divide up property so that it can be conveyed separately. The approval process in each instance is significantly different as well. Mr. Dick explained that when the ZBA hears a zoning case, there are certain standards that are associated with each type of hearing. (See attached.) Zoning cases are either a request for a special use permit or a text or map amendment, otherwise known as a re-zoning. Mr. Dick stated that he has attached the standards in the Committee's agenda packets. Mr. Dick stated that it is very important that the special use permits and the text/map amendments are approved according to these standards. Mr. Dick noted that if an interested party wants to give information about the property in question, it is always best for that person to be present and speak at the public hearing. A letter is not a good form of communication since a letter cannot be subject to cross-examination. Mr. Dick stated that testimony that is given at a public hearing should also be given in accordance to the set of standards.

Mr. Dick stated that subdivisions do not have the same set of standards. The Land Use Committee conducts these hearings. A preliminary plan can be required for all subdivisions. However, many subdivisions are a one or two lot subdivision and those cases can request a waiver of preliminary plan requirements. Staff then reviews the request to determine if preliminary plan requirements can be waived. If no preliminary plan is required, then no public hearing is required. Mr. Dick also noted that if a subdivision meets the minimum requirements of the Subdivision Ordinance, the subdivision should be recommended for final approval by the County Board. Mr. Dick stated that he has attached a flow-chart showing the subdivision process when a preliminary plan is required. (See attached.) Mr. Dick stated that developing a subdivision creates a huge financial constraint on the developer. The developer is under pressure to sell lots as soon as possible. Mr. Hug added that there is limited ability in the State Statute for subdivision enforcement. Mr. Hug stated that the only option that the County has is to fall back upon the bond posted before the developer began the project. The County can go in and finish a subdivision so that it will be acceptable to a township. That is not done very often. Mr. Hug stated that there is no "penalty" for a developer who does not complete a subdivision. The County Board can refuse to grant the final plat.

Chairman Gordon stated if Committee Members are interested, they may be able to convey proposals to State Legislators through the County's Legislative Committee. Chairman Gordon stated that altering State Statutes could help to strengthen the hand of County Government. Ms. Sue Berglund stated that she just spoke with Mr. Zeunik about exploring those possibilities. Chairman Gordon stated that he and Mr. Dick had also discussed some other avenues that the Committee may want to consider. Chairman Gordon asked Mr. Dick to present this idea to the Committee.

Mr. Dick stated that one thing that deserves consideration is a program called "administrative adjudication". There is a provision in State Statute allowing the County to put such a program into place. Mr. Dick stated that he and Mr. Hug, Mr. Zeunik and Mr. Hamann have discussed this subject at length. Mr. Dick stated that this program already exists in Peoria County. McLean County could follow their example. Mr. Dick stated that as per the recent budget message presented by Mr. Zeunik, the State's Attorney's Office is hurting as is every other department. Mr. Dick stated that he has spoken with Mr. Yoder and he is in agreement that a couple of the most severe zoning violations should be prosecuted each year. That tool coupled with administrative adjudication would make zoning enforcement more effective.

Mr. Hug explained that administrative adjudication requires the County to have a hearing officer that hears cases presented by a zoning enforcement officer. The hearing officer is responsible for deciding if the violations actually occurred and then imposes a fine or appropriate disciplinary action. If the property owner

refuses to pay a fine, that is entered as a judgement in the Court. This process takes much less time for staff than prosecuting each case. Mr. Hug noted that Peoria County's experience with administrative adjudication shows that it works.

Mr. Hug stated that a relatively small program could be implemented here in McLean County for a relatively inconsequential additional expense. On the other hand, if the Board wishes to issue tickets for every violation to generate funds, it should be prepared to spend some money for a hearing officer that will be here frequently. Mr. Hug stated that he thinks administrative adjudication would prove to be a worthwhile method to pursue.

Mr. Bill Yoder, State's Attorney, stated that he has had discussions with Mr. Hug, Mr. Dick and Mr. Hamann regarding non-compliance of County Zoning Ordinances. Mr. Yoder stated that he has asked Mr. Hug to review a list of cases, some of which were pictured in today's presentation. The State's Attorney's Office is trying to start sending a message that these violations will not be tolerated, especially the worst offenses. The worst violations will be prosecuted.

Ms. Sally Rudolph, Chair, ZBA, stated that she thinks that a little bit of enforcement will go a long way. Chairman Gordon stated that he agrees with Ms. Rudolph and noted that prosecuting even a couple of the worst offenders every year will help send a strong message as well.

Chairman Gordon asked if there were any other items to come before the Committee. Hearing none, Chairman Gordon adjourned the meeting at 12:30p.m.

Respectfully submitted,

Christine Northcutt
Recording Secretary

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