

***AMENDED***  
**Minutes of the Land Use and Development Committee**

The Land Use and Development Committee of the McLean County Board met on March 4, 2004 at 4:45 p.m. in Room 700, Law and Justice Center, 104 W. Front Street, Bloomington, Illinois.

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

Members Absent: Member Kalapp and Rackauskas

Other Board Members Present: None

Staff Present: Ms. Christine Northcutt, Recording Secretary, County Administrator's Office

Department Heads/  
Elected Officials  
Present:

Mr. Phil Dick, Director, Building and Zoning;  
Mr. Michael Behary, County Planner, Building and Zoning; Mr. Brian Hug, Civil Assistant State's Attorney; Mr. Jeff Tracy, Project Manager, County Highway Department; Mr. John Hendershott, Staff Sanitarian, Health Department

Others Present: Ms. Christine Brauer, McLean County Regional Planning Commission; Mr. Frank Miles; Mr. David Nesbit; Dr. Bruce Anderson.

Chairman Gordon called the meeting to order at 4:55 p.m.

Chairman Gordon stated that the first order of business is the approval of the February 5, 2004 minutes. Hearing no corrections, Chairman Gordon placed the Land Use and Development Committee minutes of February 5, 2004 on file as presented.

Chairman Gordon presented the bills from February 29, 2004, which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The pending total is \$252.67. The prepaid total is \$19,425.40, with the aggregate total being \$19,678.07.

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

Chairman Gordon presented the Committee's only item for action which is a request by David Nesbit to reinstate the Preliminary Plan for the Prairieland Subdivision, File No. S-00-11. Chairman Gordon informed the Committee that this item was postponed from the February 5, 2004 Committee meeting. Chairman Gordon asked the Committee if they would refer to the letter that was sent to the Committee from *Concerned Home Owners Adjacent To and Impacted by Prairieland Subdivision – Apollo Acres*. Chairman Gordon stated that he has been involved in conversations with Mr. Phil Dick, Director, Department of Building and Zoning, Mr. Jeff Tracy, Project Manager, County Highway Department, Mr. Brian Hug, Civil Assistant State's Attorney, to further clarify the issues raised in the letter. Chairman Gordon stated that he would like to present several counter points to the information, which was presented in the letter from the concerned homeowners.

Chairman Gordon informed the Committee that the first item that he wanted to address is the first bullet-point in the letter, which addresses "major problems with run-off and erosion". Chairman Gordon stated that this item is and has been an ongoing concern. He informed the Committee that as a part of meetings, which were held involving the applicant, his engineer, his attorney and County staff, there is recognition that this matter is a concern. There is clear indication that the applicant intends to set things right and that there has been progress in that direction. Chairman Gordon stated that the question of an erosion control plan is a concern, but not a prerequisite under the Subdivision Ordinance provisions for reinstatement of the applicant's Preliminary Plan.

Chairman Gordon stated that the next item that he would like to address is the second bullet point which addresses "land use set back requirements".

Chairman Gordon advised the Committee that the required 20-foot distance from adjacent property lines will be achieved at the time that it becomes necessary. Chairman Gordon stated that the answer to the question at the end of the paragraph which reads, "Is it safe to assume removal and replacement of this detention basin will be necessary for the project to be in full compliance?", is no. It is not necessary for removal of the basin for the project to be in full compliance. The end of that paragraph suggests that if this has been a true violation of the Subdivision Ordinance, the developer could be fined \$500.00 for each day of the violation. Chairman Gordon informed the Committee that legal counsel advises him that the developer could be fined an amount not to exceed \$500.00 per week for each violation. Chairman Gordon noted that a developer could be fined \$500.00 per week by a court of law, not by any administrative order. Chairman Gordon noted that the Subdivision Ordinance does state, in error, that there could be a fine of \$500.00 per day, but that information is incorrect.

Chairman Gordon moved on to the next bullet point which references improperly installed underground piping. Chairman Gordon advised the Committee that Mr. Dick has never stated that removal of said piping is necessary in order for this project to be in full compliance. Chairman Gordon informed the Committee that what is relevant here is that the Department of Building and Zoning will need "as-built" drawings in the final stages of this project, as development proceeds. Chairman Gordon stated that the last sentence of that particular paragraph states that the developer should know the final grade of the land as a first step in the development of the land for subdivision. Chairman Gordon noted that statement is not true, as the engineers involved in this project will handle this issue at the later stages of subdivision development.

Chairman Gordon informed the Committee that the next section states that Mr. Nesbit has created a new route for rainwater run-off. Chairman Gordon stated that inspection has confirmed that Mr. Nesbit has not created a new exit route for water from the Prairieland Subdivision.

Chairman Gordon stated that the next bullet point concerns the underground aviation fuel tank. Chairman Gordon advised the Committee that an aviation fuel tank was located on the property. On March 1, 2004 the underground fuel tank was removed by Illinois Oil Marketing, from Peoria, Illinois. Illinois Oil Marketing is a licensed underground tank removal contractor. Chairman Gordon advised that the State Fire Marshall was also present when the tank was removed.

Chairman Gordon stated that the next item mentioned in the letter from concerned residents is a permit for a junkyard. Chairman Gordon advised that this is a concern that the Committee hopes that Mr. Nesbit will address promptly. Chairman Gordon stated that if the preliminary plan is reinstated, Mr. Nesbit would be urged to remove any vehicles which are not related to subdivision development.

Chairman Gordon stated that the next item in the letter is in regards to the Illinois Vehicle Code. The letter states that violation of the Illinois Vehicle Code would constitute a violation of the Subdivision Ordinance. That is not an accurate statement. This does not violate the Subdivision Ordinance.

Chairman Gordon stated that the next bullet point in the letter is in regards to the Prairieland sewage treatment system. Chairman Gordon noted that the letter advises that the sewage treatment equipment is no longer under warranty. Chairman Gordon advised that McLean County does not require that any specific piece of equipment be warranted. Second, the letter states that the Subdivision Ordinance requires that the technical specifications for any equipment be provided to the County Engineer. Chairman Gordon noted that is not the case with regard to this specific reference. The specifications for this particular equipment (sewage treatment equipment) are to be reported to the McLean County Health Department or to the Mr. Jeff Tracy, Project Manager, at the Highway Department. Third, the letter states that it is the County's responsibility to inspect the sewer plant construction. That, again, is untrue. The Illinois Environmental Protection Agency (IEPA) requires that Mr. Nesbit's engineer inspect the sewer plant construction and then certify his inspection results to the IEPA.

Chairman Gordon stated that the last point in the letter that he would like to address is the criminal code of the Illinois Compiled Statutes. There is reference in this section to a violation of the Illinois Excavation Fence Act. Chairman Gordon advised the Committee that a subdivision is not that type of excavation and therefore is not regulated under that Act. The Subdivision Ordinance does not refer to any such requirements relating to the aforementioned State Statute.

Chairman Gordon stated that the concerned homeowners sum up their letter by stating that there has apparently been no discussion regarding full compliance being necessary in order for Mr. Nesbit's Preliminary Plan to be reinstated. Chairman Gordon stated that full compliance in all respects is not only not necessary, but cannot be achieved until the subdivision process continues further along.

Chairman Gordon stated that the comments and concerns expressed by the homeowner's are paid heed. The point remains that the Subdivision Ordinance supplies the basis for the Committee's decisions, even if there are other areas of concerns.

Chairman Gordon thanked the Committee for listening and opened the floor for discussion.

Mr. Segobiano thanked the concerned homeowners for taking the time to inform the Committee about their concerns.

Mr. Segobiano stated that he thinks that it would have been appropriate for Chairman Gordon or the Department of Building and Zoning to prepare a summary of the information that Chairman Gordon just presented to the Committee. The Committee members could have reviewed that information and formed their own questions. Mr. Segobiano stated that it would have been much easier to form an opinion if the information is presented in a more formal format and that he was not certain as to how he would vote. Chairman Gordon responded that County staff is present to answer any questions that Mr. Segobiano or other Committee members may have.

Ms. Ahart asked Mr. Dick if, according to the County's Subdivision Ordinance and its provisions, have all of the necessary requirements been met in order to reinstate the Preliminary Plan. Mr. Dick replied that County staff is comfortable that Mr. Nesbit's operation is in compliance with the Subdivision Ordinance. Mr. Dick also informed the Committee that the letter that the Committee has from the concerned homeowners was not received by the Department of Building and Zoning until Monday, March 1, 2004. Mr. Dick informed the Committee that the Department of Building and Zoning has been involved in other very lengthy public hearings on both Tuesday and Wednesday evening prior to this meeting.

Mr. Cavallini stated that at the last Land Use and Development Committee meeting, the Committee reviewed the Subdivision Preliminary Plan that Mr. Nesbit submitted to the Committee. Mr. Cavallini stated that he made a point to travel out to the proposed Prairieland Subdivision. Mr. Cavallini stated that the actual property looks nothing like the Preliminary Plan that Mr. Nesbit presented to the Committee. Mr. Cavallini stated that he is glad that the aviation fuel tank has been removed, but he wonders why it was just recently removed. Mr. Cavallini noted that before he would vote to approve this Preliminary Plan, he would want to be assured that this development is going to be inspected very closely as it progresses. Mr. Dick responded that in regards to the Subdivision Ordinance, the major issues that the Committee should be concerned with have to do with the inoperable vehicles and with erosion control. These problems have been addressed in meetings with Mr. Nesbit, his attorney, his engineer and the IEPA. Mr. Dick states that he feels confident that Mr. Nesbit will do his best to comply. Mr. Dick noted that Mr. Nesbit needs a Preliminary Plan in order to move this project forward, or the project is dead in its tracks. Mr. Dick stated that an inspection system is set up for the proposed erosion control plan. A representative from the County Highway Department will be monitoring the progress as well as the IEPA. Mr. Dick stated that if the Preliminary Plan is not reinstated, there may be far worse erosion problems if the land continues to sit unused.

Mr. Cavallini asked if the Preliminary Plan is approved this evening, and all of the Committee's concerns are not addressed, what options does the Committee have to ensure compliance. Mr. Dick replied that the Final Plat would be held up if all of the issues were not addressed. As a result, Mr. Nesbit could not sell any lots in the subdivision.

Mr. Segobiano stated that even though the Department of Building and Zoning did not receive this request until Monday, March 1, 2004, the Office should have set aside time to put together a summary for the Committee's review.

Mr. Segobiano stated that he would agree with Mr. Cavallini, in that, the underground aviation fuel tank should have been removed a long time ago. Secondly, why have the junk cars on the lot not been dealt with before this request was brought to the Committee. Mr. Segobiano stated that he thinks it would have been better if Mr. Nesbit would have addressed the junk car issue and the soil erosion before he made this request. Mr. Segobiano asked if the Committee grants this request tonight, what assurance does it have that Mr. Nesbit will take care of the outstanding issues. Mr. Hug replied that the Final Plat is the big hammer. If Mr. Nesbit doesn't comply, the County can withhold the Final Plat and he cannot sell one lot in this Subdivision. Mr. Hug stated that Mr. Nesbit searched for the underground fuel tank, and apparently just recently found it. Mr. Hug advised the Committee that those old tanks cannot be removed without the presence of the State Fire Marshall. Mr. Hug also informed the Committee that there are no junk cars on this property, there is inoperable equipment on the property. This includes a couple of dump trucks and concrete trucks, which have flat tires and or broken windows. Because they have not moved, the Zoning Office has declared them inoperable. Mr. Hug stated that Mr. Miles began representing Mr. Nesbit this past fall and has worked to get these issues resolved. Mr. Hug stated that Mr. Miles assures him that Mr. Nesbit will take care of the vehicles.

Mr. Segobiano states that he as an elected official, he has the privilege to vote yes or no on this matter. He stated that he will vote "no" on the reinstatement of this preliminary plan.

Mr. Cavallini asked what happens if the Committee votes "no" on this issue. Mr. Cavallini asked if anything will move forward or will things continue to sit on the property untouched. Mr. Dick responded that is precisely why staff is recommending the reinstatement of this Preliminary Plan. Essentially, things are on the right track and Mr. Nesbit needs the Preliminary Plan to advance it any further.

Mr. Segobiano stated that he would like to see 30 – 60 days of concerted effort by Mr. Nesbit before he would vote to reinstate the Preliminary Plan.

Mr. Hug stated that Mr. Nesbit cannot make a concerted effort if he does not have a Preliminary Plan. He is not allowed to take any action, until or unless the Preliminary Plan is reinstated.

Mr. Cavallini asked if a motion could be made to recommend reinstating the Preliminary Plan contingent upon the removal of the inoperable vehicles within a set amount of time. Mr. Dick suggested that Mr. Nesbit could be given until the March 16, 2004 County Board Meeting to remove the vehicles and this issue could be addressed at a Stand-Up Committee Meeting. Mr. Hug stated that has not been done before, but there is no reason that it cannot be done.

Chairman Gordon informed the Committee that the Erosion Control Plan is not a prerequisite under the County Subdivision Ordinance for reinstatement of the Preliminary Plan. That is a prerequisite further down the line. Chairman Gordon stated that the matter of inoperable vehicles is also not a prerequisite for reinstatement of the Preliminary Plan, but the Committee can require that of the developer if they see fit.

Mr. Cavallini stated that he would feel more comfortable for himself and for the residents who have signed the petition, if as a part of the motion, Mr. Nesbit is required to remove all inoperable vehicles before he is allowed to continue. Mr. Cavallini stated that he also feels better that the underground aviation fuel tank has been removed.

Mr. Segobiano asked why would the Committee even need a motion if this item were tabled to a Stand-up Committee Meeting, that would give the applicant ample time to fix the issues and this could be reconsidered at that time. Mr. Dick stated that even if the Committee makes this motion, they will need a Stand-up to see if all of the contingencies have been met. Chairman Gordon stated that an action by the Committee would probably carry more weight than just tabling the matter.

Motion by Cavallini/Ahart to recommend reinstatement of the Preliminary Plan for the Prairieland Subdivision contingent upon removal of the inoperable vehicles and construction equipment before March 16, 2004.

Chairman Gordon noted that the Chair will vote.  
Chairman Gordon called the roll.

|                  |       |
|------------------|-------|
| Member Ahart     | "Yes" |
| Member Cavallini | "Yes" |
| Member Segobiano | "No"  |
| Chairman Gordon  | "Yes" |

Minutes of the Land Use and Development Committee Meeting  
March 4, 2004  
Page Eight

Chairman Gordon advised the Committee that the motion carries by a vote of 3 – 1.

Ms. Ahart asked if Mr. Dick or someone could write a reply to the “concerned citizens” to let them know what action the Committee has taken. Mr. Hug replied that you are not obligated to make a written response. Mr. Hug stated that the Minutes of the Committee meeting will serve as a reply. Ms. Ahart asked if Mr. Dick could send the citizens a letter giving them the information as to where the minutes could be found on the County’s website. Mr. Dick stated that he would be happy to send that to the citizens.

Chairman Gordon informed the Committee that there is one item for information. The item is to remind the Committee and the public that the annual meeting of the Heartland of Illinois Resource Conservation and Development area. The meeting will take place on Thursday, March 18, 2004 at 6:30 p.m. at 4004 College Park Road, Decatur. Chairman Gordon noted that is the U.S.D.A. Office adjacent to the campus of Richland Community College. Chairman Gordon stated that he and Mr. Dick are steering committee members and will be attending.

There being no further business to come before the Committee, Chairman Gordon stated he would entertain a motion to adjourn.

Motion by Cavallini/Ahart to adjourn the meeting at 5:45 p.m.  
Motion carried.

Respectfully submitted,

Christine Northcutt  
Recording Secretary