

## Minutes of the Land Use and Development Committee

The Land Use and Development Committee of the McLean County Board met on February 5, 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 Rackauskas, and Kalapp

Members Absent: Member Segobiano

Other Board Members Present: None

Staff Present: Ms. Christine Northcutt, County Administrator's Assistant

Department Heads/  
Elected Officials  
Present: Mr. Phil Dick, Director, Building and Zoning; Mr. Michael Behary, County Planner, Building and Zoning; Mr. Brian Hug, Assistant State's Attorney; Mr. Jeff Tracy, Project Manager, County Highway Department; Mr. Tom Anderson, Supervising Sanitarian, Health Department

Others Present: Ms. Christine Brauer, McLean County Regional Planning Commission; Mr. Frank Miles; Mr. David Nesbit; Dr. Bruce Anderson; Mr. Mathew Blain; Mr. Dan Kelley; Mr. Chris Hauptman

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 January 8, 2004 minutes. Chairman Gordon stated that he would entertain a motion to approve those minutes.

Motion by Cavallini/Rackauskas to approve the minutes from the January 8, 2004 meeting of the Land Use and Development Committee. Motion carried.

Chairman Gordon presented the bills from December 31, 2003 which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The total is \$5,902.86 with the prepaid total being the same.

Minutes of the Land Use and Development Committee Meeting  
February 5, 2004  
Page Two

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

Chairman Gordon presented the bills from January 31, 2004 which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The total is \$30,840.78 with the prepaid total being the same.

Motion by Kalapp/Rackauskas to recommend approval of the bills as presented by the County Auditor. Motion carried.

Chairman Gordon presented the first item for action which is a request by Mr. Matthew Blain for a waiver of preliminary plan requirements and a two lot final subdivision plat for Blain's Subdivision. Chairman Gordon stated that he would turn this over to Mr. Phil Dick, Director, Building and Zoning. Mr. Dick stated that this plat is a two lot subdivision immediately north of the Deer Ridge Subdivision. Both of these lots have frontage on Court Street, which connects to Route 9 across from the Deer Ridge Subdivision. Court Street has not been accepted by the township for maintenance, so it is maintained by the property owners. Mr. Blain has gotten a form signed by all residents along the road agreeing to share the costs of maintaining the road. Mr. Dick informed the Committee that Lot 5A has a single family dwelling and the applicant proposes to build a new single family dwelling on Lot 5B. Mr. Dick informed the Committee that Mr. Blain is present at the meeting and would be happy to answer any questions.

Ms. Rackauskas asked how many lots are on Court Street. Mr. Dick replied there are four property owners on the Street. Mr. Kalapp asked if the agreement between property owners to maintain Court Street would expire or if that was a permanent agreement. Mr. Dick stated that agreement is in place permanently or until the property owners put in the money in order to build the road to township standards.

Chairman Gordon asked if there were any other questions. Hearing none, Chairman Gordon stated that he would entertain a motion to approve this application. Chairman Gordon noted that the Chair will vote.

Motion by Cavallini/Kalapp to recommend approval of waiver of preliminary plan requirements and a two lot final subdivision plat for the Blain's Subdivision, File No. S-04-01. Motion carried.

Chairman Gordon stated that the next item for action is a request by Edith Kelley for a waiver of preliminary plan requirements and a one lot final subdivision plat for the Dan Kelley Subdivision, File No. S-04-02. Chairman Gordon invited Mr. Dick to present this item to the Committee. Mr. Dick informed the Committee that this request is for a one-lot subdivision near the Town of Lexington immediately north of Old Route 66. Mr. Dick noted that the plat access certificate will need to be signed by the Illinois Department of Transportation (IDOT). IDOT has already approved the entrance. Mr. Dick stated that the Health Department has signed off on the septic system. Mr. Jeff Tracy from the Highway Department has reviewed the preliminary plan and has also indicated that he is supportive of the plan. Mr. Dick informed the Committee that Mr. Dan Kelley is present at the meeting if the Committee has any questions.

Minutes of the Land Use and Development Committee Meeting  
February 5, 2004  
Page Four

Chairman Gordon asked the Committee if there were any questions. Hearing none, Chairman Gordon stated that he would entertain a motion to approve this application. Chairman Gordon informed the Committee that the Chair will vote.

Motion by Cavallini/Rackauskas to recommend approval of  
Waiver of preliminary plan requirements and a one-lot final  
Subdivision plat for the Dan Kelley Subdivision, File No. S-04-02.  
Motion carried.

Chairman Gordon stated that the third item for action is a request by Mr. David Nesbit to reinstate the preliminary plan for the Prairieland Subdivision. Chairman Gordon asked Mr. Dick to present this item to the Committee. Mr. Dick informed the Committee that a preliminary plan is good for three years from the approval date. Mr. Dick stated that there was a two year delay, awaiting, by the Illinois Environmental Protection Agency (IEPA) of the subdivision's septic system. Therefore, the preliminary plan expired. Over the past several months, staff from the County Health Department, the County Highway Department, the State's Attorney's Office, and the Bloomington Township Water District have been meeting with the applicant and his attorney to discuss how issues related to the development of this subdivision can be resolved. Mr. Dick stated that there were two conditions that needed to be met before staff would recommend reinstating the preliminary plan. The first was that an erosion control plan be submitted to the IEPA, that met their requirements. The second was that there be an agreement with the Bloomington Township Water District (BTWD) to accept the improved water line. Mr. Dick informed the Committee that these conditions were not met at the time that the staff report was made. However, since that time, Mr. Dick has been informed that the applicant has satisfied both of those conditions. Mr. Dick spoke with Mr. Dan Deneen, attorney for the BTWD, and Ms. Illiana Brown of the IEPA and both have assured Mr. Dick that all necessary conditions have been met. Mr. Dick stated that Ms. Brown informed him that she had not been out to the site since October 31, 2003 but, as far as she is concerned, the erosion control plan is complete.

Mr. Dick stated that Mr. Tom Anderson, Health Department, Mr. Jeff Tracy, Highway Department, and Mr. Brian Hug, Assistant State's Attorney are all here to answer any questions that the Committee may have.

Chairman Gordon informed the Committee that Mr. David Nesbit and his attorney, Mr. Frank Miles are also present to answer any questions that the Committee may have. Chairman Gordon stated that this is not a public hearing, but there may be an opportunity for other interested individuals to make statements.

Ms. Rackauskas asked what is included in this erosion control plan. Mr. Tracy responded that it illustrates the temporary measures that Mr. Nesbit is taking to

ensure that silt does not leave the construction site. It usually outlines a seeding schedule and where developer plans to put silt fence and straw bails.

Ms. Rackauskas asked if it is site specific. Mr. Tracy replied that is correct. Ms. Rackauskas asked who devised Mr. Nesbit's erosion control plan. Mr. Tracy responded that Mr. Nesbit's engineers, Randolph and Associates prepared the plan. Ms. Rackauskas asked who will monitor that the plan is being adhered to by the developer. Mr. Tracy responded that the IEPA is ultimately responsible, but that the County Highway Department's inspector will also be checking up on it periodically. Mr. Tracy stated that the IEPA has one inspector for 17 Counties, so she is very busy and cannot always keep on top of all situations. Mr. Tracy also informed the Committee that the County Board passed the Subdivision Ordinance, which states that if the erosion control plan is not being met, the County may pursue action to stop the developer's work. Mr. Tracy noted that the IEPA was pleasantly surprised at this action, because they usually do not get cooperation from local governments. Ms. Rackauskas asked if the developer is found to be in non-compliance what happens. Mr. Tracy stated that if the IEPA finds the developer to be in non-compliance, they go through their own proceedings and could even report the problems to the Attorney General's Office. Ms. Rackauskas asked Mr. Tracy how long it takes before the IEPA acts on a situation that is in non-compliance. Mr. Tracy stated that, because the IEPA is so short-handed, it would probably take a couple of months for the proceedings to even begin.

Chairman Gordon stated that he wanted everyone concerned to be aware that the Land Use and Development Committee is in the process of reviewing a number of issues along the lines of Ms. Rackauskas' questions and scheduling a work-session, in which to discuss those issues. This discussion is helpful in gathering information for that upcoming meeting.

Ms. Rackauskas stated that she would like to have more information on the sewer system that Mr. Nesbit has installed. Mr. Tom Anderson, Supervising Sanitarian, Health Department, stated that the sewer system is a proprietary system designed by a company named Oranko. The system has been tested in numerous areas. The IEPA looks upon it favorably. It is a proven system under careful management. Before the applicant proposed this type of system to service this subdivision, it was used in two other locations in Illinois and the EPA spoke very fondly of those systems. Since that time, there have been many others installed. The system consists of an individual septic tank on each property. That septic tank discharges directly into a conduit. That conduit carries effluent from the septic tanks to the modified recirculating sand filter. This produces a high quality of effluent, which ultimately discharges into the retention basins of the subdivision.

Mr. Kalapp asked if there will be a view obstruction to this system. Mr. Anderson replied that this is a totally below ground system. Though, it is an open system, so gravel will be seen at the surface.

Ms. Rackauskas asked what would be the symptoms of a malfunction of this septic system, such as a pump malfunction. Mr. Anderson stated that this system is capable of having a telemetry system, so that if there is any malfunction within the unit, the telemetry system will dial up to three telephone numbers reporting the malfunction to the appropriate parties. Each septic tank can be equipped with such a system. Mr. Anderson stated that he is unaware if Mr. Nesbit has purchased this option for Prairieland Subdivision. Mr. Anderson added that this system does contain a holding tank to retain any waters in case the flows cannot discharge. Ms. Rackauskas asked how this information is monitored. Mr. Anderson replied that the system generates Daily Monitoring Reports (DMR). Those DMR's are required to be turned into the IEPA and placed on a web-site for public notification. Mr. Cavallini asked who is ultimately responsible for monitoring the reports generated by the system. Mr. Anderson replied that a third party operator has to be hired to maintain the system.

Chairman Gordon stated that Mr. Hug informs him that there are two separate permits with regard to the sewage treatment systems which have to be issued. One permit is for construction, which has already been approved. The other is for the operation, which will not be issued until after the proposed plant will be built and ready for operation. Chairman Gordon also stated that neither the BPTW nor IEPA's concerns, which Mr. Nesbit was asked to address, pertained to the sewage treatment system. That does not mean that those questions are out of order.

Ms. Rackauskas asked who would be responsible if there were a problem with this sewer system. Mr. Anderson replied that the IEPA will issue the operational permit to a homeowners association and it is their ultimate responsibility. Mr. Anderson also noted that he spoke with the permit manager at the IEPA and was advised that Mr. Nesbit has satisfied the license requirements necessary to continue construction of this system. Mr. Nesbit does have his NPDES permit.

Chairman Gordon asked if there were other questions from the members of the Committee. Chairman Gordon stated that, though this is not a public hearing, he is going to ask Mr. Miles and Mr. Nesbit to address the Committee and in turn, spokesperson from the group opposing this subdivision will be allowed to speak.

Mr. Miles advised the Committee that many issues were raised three years ago, by neighbors in this area, when Mr. Nesbit's first preliminary plan was approved.

Mr. Miles stated that there has been no change in the County's Ordinance since that time, so there should not be any problem in renewing this preliminary plan.

Mr. Miles stated that Mr. Nesbit has incurred opposition to this subdivision since its inception. Mr. Miles stated that Mr. Nesbit has worked diligently to meet conditions set forth by the BTWD and by the IEPA. Mr. Miles informed the Committee that Mr. Nesbit has submitted a plan to the IEPA, which has been approved and has also worked out the issues with the BTWD.

Ms. Rackauskas asked what issues the neighbors were opposing. Mr. Miles responded there were several issues. First the neighbors thought that the proposed lot size was too small. They were also concerned about how effluent would be treated in the sewage system. They did not know if the additional burden could be handled. They were, in turn, concerned with water quality. Mr. Miles stated that he and Mr. Nesbit have had several meetings with the IEPA, the Department of Building and Zoning, the County Health Department and the County Highway Department to be sure that all of these concerns were addressed.

Chairman Gordon thanked Mr. Miles and Mr. Nesbit and invited a spokesperson from the opposition to speak. Mr. Chris Hauptman addressed the Committee with several concerns. His first concern is that the sewer treatment system was not installed and/or anchored properly and floated to the top and actually broke through the ground. Mr. Hauptman also alleged that there was an airfield on the property where Mr. Nesbit is proposing the Prairieland Subdivision.

Mr. Hauptman stated that there are fuel tanks still buried underground on that property and should be properly removed before construction begins. Mr. Hauptman also alleged that Mr. Nesbit's failure to comply with the IEPA's soil erosion requirements has resulted in this case being turned over to the Attorney General's Office for investigation. Dr. Bruce Anderson, echoed Mr. Hauptman's concerns. Dr. Anderson stated, emphatically, that there have been ongoing problems with the septic system that Mr. Nesbit has installed on the site.

Chairman Gordon stated that this is not a public hearing, and none of the allegations that have been made are, at this point, verifiable. Therefore, the Committee has no way of knowing whether the statements made by Mr. Hauptman are true.

Chairman Gordon asked Mr. Miles and Mr. Nesbit to respond to these allegations. Mr. Miles stated that there is a County requirement that there be a bond posted by a subdivider, and one of the things that the bond secures is the sewage system. There is money in escrow to fix problems if they should arise. Mr. Miles stated that people are not always aware that the County takes steps to insure that installations are made properly and if they are not, there is a fund of money to fix those problems. Mr. Miles stated that the bond is posted at 100% of uncompleted work and 15% of total work. Mr. Miles also stated that the

response that the Committee witnessed this evening is the sort of response that Mr. Nesbit has seen all the way through this process. If there is a legitimate

concern, it should be brought to Mr. Miles or Mr. Nesbit and they will address that concern.

Mr. Kalapp asked Mr. Miles if it is true that this situation has been referred to the Attorney General's Office by the IEPA. Mr. Miles stated that he is not aware of that situation, it may be in reference to violations which occurred in the past. Mr. Miles stated that, in response to allegations of possible underground fuel tanks on the property, he and Mr. Nesbit are not aware of any underground fuel tanks. Mr. Nesbit stated that he has searched for fuel tanks and can find no evidence of any fuel tanks or vent pipes on the property. Mr. Miles stated that if underground fuel tanks are found, they will be removed properly.

Ms. Rackauskas asked what public safety issues are at risk here if the fuel tanks actually exist and are not addressed before construction begins on this site.

Mr. Miles stated that he does not know of any public safety issues that exist if there are underground fuel tanks on this property. Mr. Miles stated that if the underground fuel tanks do exist, they should have been removed 20 years ago. The developer will take care to remove them when the issue arises. Mr. Miles stated that this issue should not stop the progress of the subdivision.

Ms. Rackauskas asked Mr. Anderson what kind of health issue these tanks could cause. Mr. Anderson replied that there is a concern that these tanks could leak fuel into the ground water. Mr. Anderson stated that the airfield was abandoned so long ago that the steel tanks could have disintegrated by now and that may be why Mr. Nesbit cannot find it. Mr. Miles added that there have been many water quality standard tests done and there has been no indication of any problem.

Ms. Rackauskas asked if, as far as the Committee is concerned, has Mr. Nesbit's soil erosion plan been approved by the IEPA and is the entire project within compliance. Mr. Dick responded that the IEPA is not comparable to the County Board. The IEPA does not report before a public body to have issues approved. The IEPA sends surveyors out to a site and makes a determination as to whether the current plan is addressing the current issues. Mr. Dick stated that on October 31, 2003, when Ms. Brown from the IEPA was last out on the site, there were problems. Ms. Brown has not been back to the site since then. Mr. Dick stated that he is not testifying to the fact that everything between the IEPA and the applicant are perfect. Mr. Dick stated that he is stating that the County is comfortable that the applicant can move forward with the subdivision and begin to be in compliance. Mr. Rackauskas asked Mr. Dick, then, if he will state that the applicant is in compliance at this moment. Mr. Dick hesitated, and answered, no.

Minutes of the Land Use and Development Committee Meeting  
February 5, 2004  
Page Nine

Chairman Gordon asked how the Committee would like to proceed at this time. Mr. Cavallini stated that he would like to move that this subject be tabled to the next Committee Meeting. Mr. Kalapp stated that he would like to second that motion. Chairman Gordon asked Mr. Cavallini, if it is his intention to postpone this topic rather than table, as it can be discussed further, if it is postponed. Mr. Cavallini responded that is what he intended. Mr. Kalapp agreed

Motion by Cavallini/Kalapp to postpone the request by Mr. Nesbit to reinstate the preliminary plan for the Prairieland Subdivision to the March 4, 2004 Meeting. Motion carried.

Chairman Gordon stated that he wanted to note for the record that he does not believe that the zoning enforcement issues that the Committee wishes to discuss further at a work-session, are the same issues at hand in Mr. Nesbit's request. This is not a zoning issue. This is a subdivision issue. Chairman Gordon stated that he does not want the Committee to act on this matter or not act on this matter because of "hearsay" that was given at this Committee Meeting. Chairman Gordon requested a roll call vote and informed the Committee that the Chair will vote.

Member Ahart	"No"
Member Cavallini	"Yes"
Member Kalapp	"Yes"
Member Rackauskas	"Yes"
Chairman Gordon	"No"

Motion carried, 3-2.

Mr. Miles stated that perhaps Chairman Gordon can give staff some direction as to what it is that he is looking for. Mr. Miles stated that he expects that in the next 30 days, there will be another group of concerned individuals with a whole new set of concerns. Mr. Miles stated that what he heard and understood were the Committee's concerns are the possibility of underground fuel tanks, the Oranko septic system, and the EPA enforcement action on erosion control.

Chairman Gordon stated that he would invite anyone who has concerns to communicate them to he or Mr. Dick so that they can be addressed before the next Committee meeting. Chairman Gordon thanked all of the individuals for their time this evening.

\*Ms. Ahart exited the Meeting at 7:01 p.m.

Ms. Rackauskas thanked the staff for all of their work on this project.

Minutes of the Land Use and Development Committee Meeting  
February 5, 2004  
Page Ten

Chairman Gordon stated that the next item on the agenda is a discussion about the Land Use and Development Committee zoning enforcement work session. Chairman Gordon stated that Mr. Yoder has informed him that he will *not* be able to attend the work shop scheduled for February 17, 2004. Chairman Gordon suggested that it may be better to wait to invite the State's Attorney to speak with the Committee until after the primary election on March 16, 2004. The Committee agreed.

Chairman Gordon stated that the last item is an invitation to the Heartland of Illinois Annual RC & D Meeting. Chairman Gordon stated that the date on the agenda is incorrect. It is actually Thursday, March 18<sup>th</sup> at 6:30 p.m. The meeting will be held at 4004 College Park Road, Decatur, Illinois. Mr. Dick stated that this Committee was instrumental in getting the County involved in participating in this RC & D. McLean County is one of the founding members. Ms. Rackauskas asked how much the annual cost is to belong to the RC & D. Chairman Gordon replied it is \$200.00 per year.

Mr. Dick also handed out to the Committee a flyer with details regarding the next Innovative Community Planning Institute. The date of the event is Thursday, March 5, 2004, which does coincide with the next Land Use and Committee Meeting. Mr. Dick asked the Committee to contact him if they wanted further information.

There being no further business to come before the Committee, Chairman Gordon adjourned the meeting at 7:15 p.m.

Respectfully submitted,

Christine Northcutt  
Recording Secretary