

Minutes of the Land Use and Development Committee

The Land Use and Development Committee of the McLean County Board met on August 7, 2003 at 5:30 p.m. in Room 700, Law and Justice Center, 104 W. Front Street, Bloomington, Illinois.

Members Present: Vice-Chairman Johnson, Members Ahart, Johnson, Cavallini and Rackauskas

Members Absent: Member Gordon and Segobiano

Other Board Members Present: Members Dean and Moss (until 5:20 p.m.)

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

Department Heads/
Elected Officials
Present:

Mr. Phil Dick, Director, Building and Zoning, Mr. Michael Behary, County Planner and Mr. John Hamann, Zoning Officer, Building and Zoning Department; Mr. Jeff Tracy, Project Manager, County Highway Department

Others Present: Ms. Christine Brauer and Ms. Lydia Reynolds, McLean County Regional Planning Commission; Ms. Sally Rudolph, Chair, Zoning Board of Appeals

Vice-Chairman Johnson called the meeting to order at 5:06 p.m. Ms. Johnson informed the Committee there would not be a Joint Property and Land Use Committee Meeting as previously scheduled. She noted that the Property Committee approved the Resolution supporting the railbanking of Norfolk and Southern Right-Of-Way from Bloomington, IL to Mansfield, IL and the Land Use Committee should review and vote on this item as well. Ms. Johnson asked if Mr. Phil Dick, Director, Building and Zoning would present this item to the Committee.

Mr. Dick stated that he and Mr. Bill Wasson, Director, Parks and Recreation Department, have put a memo together outlining the work necessary to abandon a railroad line and then to step in at the proper time to preserve it for railbanking. Mr. Dick stated that the recommendation in terms of railbanking essentially buys out the interest of the railroad and keeps the railroad right-of-way in its current configuration. Mr. Dick stated that he and Mr. Wasson have been working with the Illinois Department of Natural Resources (IDNR), officials from Farmer City,

the Village of Downs, Piatt County, Dewitt County and individuals associated with the Resource Conservation and Development Area (RC and D). The individuals from the RC and D have agreed to help facilitate the conversion of this railroad right-of-way for railbanking.

The purpose of the Resolution of Support is to help show that McLean County is interested in participating in this conversion.

Ms. Johnson stated that she would entertain a motion to approve this Resolution.

Motion by Ahart/Rackauskas to recommend approval
of a Resolution of the McLean County Board Supporting
the railbanking of Norfolk and Southern Right-Of-Way from
Bloomington, IL to Mansfield, IL.

Mr. Cavallini asked if the tracks have already been removed from the abandoned railroad. Mr. Wasson stated that the railroad has not been abandoned to this point. It is proposed for abandonment. He anticipates that will be done within this year. The rails are still there, but they have not been in use for the last 3-4 years. Mr. Tracy stated that the crossing at Gillum Road was paved over about 2 years ago. Mr. Cavallini asked if the rails will be removed. Mr. Wasson stated that is the reason individuals from the IDNR are involved. The IDNR been involved in abandonments in the past. He stated that the abandonment process abandons the interest of the railroad. Most likely, the removal of rails and ballast would be negotiated by IDNR with the railroad during negotiations for this railbanking agreement. Rails would be salvaged and ballast could form a base for a paved trail.

Ms. Johnson stated that the Vice-Chair will vote.

Motion carried.

*Mr. Dean and Mr. Moss left the meeting.

Vice-Chairman Johnson asked if there were any changes to be made to the July 10, 2003 minutes.

Motion by Cavallini/Rackauskas to approve and place on file
the minutes of the July 10, 2003 meeting. Motion carried.

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Vice-Chairman Johnson presented the bills from July 31, 2003, which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor.

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

Ms. Johnson stated that the next item is a request by the Solid Waste Technical and Policy Committee to approve a Resolution approving grants from the County's Solid Waste Management Fund.

Mr. Dick stated that Ms. Lydia Reynolds from the Regional Planning Commission is in attendance to answer any questions.

Ms. Reynolds informed the Committee that the programs to be funded by this grant are a household hazardous waste event, another composting program and a battery recycling program. Mr. Dick stated that the funds for this grant are obtained through tipping fees at the landfill and this is a distribution of those fees. Ms. Rackauskas asked where the bins for the battery recycling were located. Ms. Reynolds stated that they were working with WalMart to have them placed in or around their stores. Ms. Rackauskas asked when this would be effective. Ms. Reynolds stated she does not know. Mr. Cavallini asked if these bins would hold car batteries or just household batteries. Ms. Reynolds stated that they were just small household batteries. That is why the discussion is continuing with WalMart. They do not want people leaving car batteries or such. Ms. Rackauskas asked what is being done to publish this. Ms. Reynolds stated part of the program's budget is for flyers and various advertising.

Motion by Cavallini/Rackauskas to recommend approval of a Resolution approving the recommendations of the Solid Waste Management Technical and Policy Committee. Motion carried.

Vice-Chairman Johnson stated that the next item for business is a request by Dr. Frank Koe for approval of a preliminary subdivision plan for 355 lots in the Franklin Heights Subdivision. The County Board voted at the July 22, 2003 meeting to send this request back to Committee after the Normal Town Council denied the plan on July 21, 2003. Dr. Koe has submitted a letter to the Land Use and Development Committee requesting that the discussion of this case be continued to the September Land Use and Development Committee. Vice-Chairman Johnson informed the Committee that the request was included in the agenda packet.

Motion by Rackauskas/Ahart to continue discussion of the Franklin Heights Preliminary Subdivision Plan for 355 lots, File S-03-02 to the September 4, 2003 Meeting of the Land Use Committee.

Mr. Cavallini asked what was the Normal Town Council's objection to Dr. Koe's plan. Mr. Dick stated that it was unanimously denied because the Town of Normal was not convinced that Dr. Koe is sufficiently prepared to develop the subdivision based upon a request from Dr. Koe to have the Town of Normal pay for some ornamental street lighting. Dr. Koe was not in attendance at the Normal Town Council Meeting to answer questions. Mr. Dick stated that he has been in contact with members of the Normal staff who have advised him that Dr. Koe will have to refile and republish this issue for Normal's September meeting.

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Motion carried.

Vice-Chairman Johnson stated there are two items for the Committee's Information. The first is a report on the Solid Waste/Waste Reduction Education–Ecoolgy Action Center. There were no questions for Ms. Reynolds.

The last item for information is discussion of the Scharf gravel pit. Mr. Dick stated that he had provided the information requested by the Committee at the last meeting as part of the agenda packet. He included the signed agreement between Assistant State's Attorney, Brian Hug and Mr. Joe Scharf and the minutes from the Zoning Board of Appeals (ZBA) meeting of June 3, 2003. Mr. Dick said he would be happy to answer any questions that the Committee may have.

Ms. Rackauskas asked when the agreement between Mr. Hug and Mr. Scharf took place. Mr. Mike Behary, County Planner stated it was dated June 3rd, which was the date of the last ZBA Meeting. Ms. Rackauskas asked if she was correct in assuming that the Scharf's came to the ZBA Meeting on June 3rd to request to amend their Special Use Permit and that the ZBA voted not to amend the Special Use permit, to table the request and refer it to the State's Attorney's Office. Mr. Dick stated that was correct. Ms. Rackauskas asked if at that time, Mr. Scharf and Mr. Hug left the meeting and made the "side" agreement. Mr. Dick replied that is correct. Ms. Rackauskas asked why that transaction was not in the minutes. Mr. Dick replied that transaction was not part of the meeting. Ms. Rackauskas asked why there was not any explanation of who was involved in the meeting and when it took place in the meeting, etc. Mr. Dick stated that it was not a public meeting and that is why those items are not included. Ms. Rackauskas asked if Mr. Hug turned this document over to Mr. Dick after the "side" meeting. Mr. Dick replied that was correct. Ms. Rackauskas stated that she does not feel that this was appropriate. Mr. Tracy stated that this all took place at 11:00 p.m. after a long ZBA meeting. Ms. Rackauskas stated that is immaterial. She noted that any person should be able to go into the records and pull this item. It does not appear official. Mr. Dick stated that after this meeting Mr. Hug informed Mr. Scharf that he should seek representation. Mr. Dick noted that in the original agreement between the two, Mr. Hug had Mr. Scharf sign to the fact that he was not being represented by an attorney. Mr. Scharf subsequently engaged Mr. Frank Miles to represent him.

The next event was a meeting between the attorneys, engineer, Mr. Don Adams from the Farnsworth Group, Mr. Tracy from the Highway Department, Mr. John Hamann, Zoning Enforcement Officer and Mr. Dick from Building and Zoning. What transpired as a result of this meeting was an understanding by Mr. Scharf's

engineer and attorney that this issue is more serious than a simple zoning violation. Due to the large amount of rainfall, the stability of the berm is being jeopardized because Mr. Scharf has mined the land so deeply too close to the road. Ms. Rackauskas asked when that particular meeting took place. Mr. Dick stated it was on July 22, 2003. Ms. Rackauskas stated that the agreement states that "...the County of McLean shall permit the operation of Heyworth Pit until June 11th and or until such a date as negotiations are concluded or break-down..." Ms. Rackauskas asked why a June 11th date was set. Mr. Dick stated that the interpretation of the Assistant State's Attorney is that negotiations have not broken down. Ms. Rackauskas asked if they are currently mining. Mr. Dick replied that they are still mining, but not in the area that is located too close to the road. Mr. Dick continued that, at the July 22nd meeting, it was decided that Mr. Scharf should hire an engineering firm that specializes in sound borings and reclamation. There are several environmental firms in town that do handle this type of situation. Mr. Dick stated that he received a call on August 7th from Mr. Adams who indicated that Mr. Scharf has contracted with Technical Services Corporation (TSC). The contact at that firm is Mr. Doug Ramsey. They also sub-contracted with the Farnsworth Group to do the cross-sections of the road, the berm and the lake. Those cross-sections will be necessary for TSC to complete their study and plan to stabilize the lake. Ms. Rackauskas asked if there was a timeframe set forth when this activity should be done. Mr. Dick stated that their plan is to begin work next week according to Mr. Adams. Mr. Cavallini asked how deep the pit is. Mr. Dick replied that it could be as deep as 60 feet. Ms. Rackauskas asked if the Committee can request a definite timeline to complete this work. Mr. Dick replied that he proposes that Mr. Scharf be invited to the next Committee meeting. Ms. Rackauskas asked that we make a request in writing as to a timeline for this activity. Ms. Ahart asked if the County has waived its right to fine Mr. Scharf for his past abuses in lieu of a promise of reclamation. Mr. Dick stated that fines had to be based on how the County has been injured, so setting a fine is not always easy to do. It is easier to have Mr. Scharf fix this problem at his own cost rather than charging fines. Ms. Ahart asked what is the primary target of his reclamation. Mr. Dick stated that the primary concern of all involved now is public safety and stability of the bank adjacent to the road. There is also a concern that Mr. Scharf does not continue to profit from improper mining. Ms. Ahart asked if he has been mining improperly for five years. Mr. Dick replied that is correct. Ms. Ahart stated that she drove out to the pit and she is very concerned that there is not a berm, only the lake. Mr. Cavallini asked if it were possible for the road to give way. Mr. Dick responded that it could. Mr. Cavallini asked what liability does the County bear. Mr. Dick stated that this is a township road. He believes that Mr. Scharf would bear ultimate responsibility. Ms. Rackauskas asked if there could be barriers or fencing placed around there to warn travelers. Mr. Tracy replied that the safest

option would probably be to allow Mr. Scharf to temporarily build a berm around the road.

Ms. Ahart asked if the ZBA has the authority to make a requirement as to what land used for mining will be left like after the mining is done. Ms. Sally Rudolph, Chair of the ZBA, stated that, generally, enforcement of zoning laws is left to staff in the Building and Zoning Department. The ZBA does not consider itself an enforcement entity. It has the right to inspect any facility at any time.

Ms. Rudolph stated that at the time when the original special use permit was approved, it went to the County Board without recommendation. The County Board did eventually approve it. Mr. Dick added that when the Special Use Permit was approved, Mr. Scharf was required to submit a reclamation plan and a bond of \$50,000.00 for reclamation. They were supposed to be performing reclamation as they have been going along and they have not done that. Ms. Rackauskas asked if those issues have been addressed. Mr. Dick stated that first and foremost, stabilization of the bank needs to be addressed. Ms. Rackauskas stated that she feels that all of the issues need to be addressed. She asked who would have the right to shut down Mr. Scharf's operation. Mr. Dick stated that the State's Attorney's Office has the authority, but the issue would have to be taken to court. Ms. Rudolph added that if you shut down his operation, you run the risk that he will not be able to pay for the reclamation. Ms. Rackauskas stated that she would like to revisit this situation when it is completely resolved so that it can result in a learning experience rather than just having been an undesirable situation. Ms. Rackauskas thanked Mr. Dick for all the information that he provided to the Committee.

Chairman Johnson asked if the agreement that was drawn up by Mr. Hug and signed by Mr. Scharf needs to be further approved by the County Board. Mr. Dick replied that the agreement is a temporary fix until something more permanent can be ironed out. Ms. Rackauskas stated that she feels that the agreement needs to be amended to provide some details of how it came into being.

Ms. Ahart stated that she would like for something to be done for safety. Mr. Tracy responded that signs will not save lives in this situation. He said that he is the road commissioner for that particular road and he does not feel that there is an immediate safety risk. He suggested that if the County can require Mr. Scharf to do so, he should be asked to pile some dirt around the road. Mr. Dick stated Mr. Hug will have to draft a letter to Mr. Scharf's attorney, Mr. Frank Miles.

Ms. Ahart asked if the Committee could receive an update at the September Meeting. Vice-Chairman Johnson requested that Mr. Hug be present as well.

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Vice-Chairman Johnson asked if there were any other items for business, hearing none she stated she would entertain a motion to adjourn.

Motion by Rackauskas/Ahart to adjourn. Motion carried.

Vice-Chairman Johnson adjourned the meeting at 6:05 p.m.

Respectfully submitted,

Christine Northcutt
Recording Secretary

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