

## **Minutes of the Land Use and Development Committee Meeting**

The Land Use and Development Committee of the McLean County Board met on Thursday August 2, 2012 at 4:45 p.m. in Room 400, Government Center, 115 E. Washington Street, Bloomington, Illinois.

Members Present: Chairman Gordon, Members, Erickson, Segobiano, Soeldner and Wendt

Members Absent: Cavallini

Other Board Members Present:

Staff Present: Mr. Bill Wasson, County Administrator, Ms. Diana Hospelhorn, Recording Secretary, County Administrator's Office

Department Heads/  
Elected Officials  
Present: Mr. Phil Dick, Director of Building and Zoning

Others Present: None

Chairman Gordon called the meeting to order at 4:45 p.m. Chairman Gordon presented the Minutes of the July 5, 2012 Land Use and Development Committee Meeting for approval. He asked for any additions or corrections. Hearing none, he approved and placed the July 5, 2012 Land Use and Development Meeting minutes on file as submitted.

Chairman Gordon presented the bills from July 31, 2012 which have been reviewed and recommended for transmittal to the Land Use and Development Committee by the County Auditor. The prepaid total and fund total for July 31, 2012 is \$29,645.56. He asked for a motion to approve the bills as presented by the County Auditor.

Motion by Segobiano/Soeldner to recommend approval of the July 31, 2012 bills as presented by the County Auditor.  
Motion carried.

Chairman Gordon informed the Committee that there were no action items on the Agenda. He stated that the first item of information is the discussion of zoning regulations in Illinois Counties for fracking, hydraulic fracturing or oil and gas drilling. Chairman Gordon asked Mr. Phil Dick, Director of Building and Zoning to address the Committee.

Mr. Dick referred to the Zoning Regulations in Illinois Counties of Oil and Gas Drilling-Fracking memo. He noted that he received 17 responses from different counties. The information in the memo is provided to the Land Use and Development Committee in order to compare how counties in Illinois regulate hydraulic fracturing through zoning regulations as compared to McLean County. Information from counties with zoning regulations was provided by Zoning Directors and in one case by a planner.

The McLean County Zoning Ordinance regulates hydraulic fracturing, as identified as "Oil or Gas Drilling/Refining", as a Special Use in the Agriculture District and the M-1 Restricted Manufacturing district, and a permitted use in the M-2 General Manufacturing District.

The following responses were received from Illinois Counties that enforce zoning regulations:

Champaign County, Champaign: Our Ordinance requires a Special Use permit (from the Zoning Board of Appeals) for "mineral extraction" which I believe is what oil or gas drilling is and probably is also what "hydraulic fracturing" would be considered although I wonder if there are other necessary activities in fracking that could result in it also being considered as some kind of manufacturing process? If fracking looks likely to come to Champaign County, I would imagine some would want that Special Use permit to be determined by the County Board or perhaps to make something even more restrictive (?) but so far I have not investigated this issue.

DeWitt County, Clinton: Our ordinance lists it as Oil Extraction. It is a permitted use in Ag, RD-1, and Special Use in RD-2, RD-3, Ind. and FP. Our ordinance does not have any regulations on fracking.

Iroquois County, Watseka: Iroquois County does not have anything in the ordinance regarding "fracking".

Jo Daviess County, Hanover: I would most likely qualify it as "Oil or Gas Drilling/Refining/Distillation" which is a Special Use in the Ag and M-1 districts and a permitted use in the Industrial district.

Livingston County, Pontiac: If I had such a request today I would treat it as a Special Use, as a mineral extraction and/or as a gas/oil distribution center. These would be Special Uses in all districts. We have nothing that addresses fracking or hydraulic fracturing, specifically. So I will be curious to see what conclusions you come up with in your research in this matter. I also would need to research oil and gas in our county, to see if this is a concern. I am aware of the stone, and coal in the county, and the Nicor gas storage areas are approved Special Uses. And, I have had discussions of transporting sand through the county going out east to be used for fracking operations. However, I am not aware of oil and gas drilling being a major issue during the history of our county, nor has any interest been shown, other than in general decades old mineral rights agreements (generally for coal). So I need to research this further also to see if our zoning ordinance needs to be refined to address these areas.

Logan County, Lincoln: Logan County allows all forms of extraction as a permitted use in an M-3 Extraction District. We really do not have specific criteria for fracking and only reference compliance with Surface-Mined Land Reclamation Act in that district. Our uses in this zone have been coal mines and a quarry.

Macon County, Decatur: I don't find anything in our ordinances for oil or gas drilling. The only thing I can find is the electrical permitting, it is unique to agriculture uses, could be a Special Use. We've had two in Macon County in the past year. I could not find anywhere, any permits issued.

Menard County, Petersburg: We have had no such requests. Our Ag zoning district says you need a Special Use permit for mining and extraction of minerals but is silent on oil/gas drilling per se. Our M-1 Manufacturing District regulations allow as a permitted use "Gas company plants & facilities" and "Well drilling". However, we currently don't have a single parcel zoned M-1. I also don't have any definitional criteria to give guidance either. Bottom line, if someone were to ever come into the County to want to do fracking, I'm going to the State's Attorney for guidance.

Moultrie County, Sullivan: In the Moultrie County Zoning Ordinance this use is considered "Oil or Gas Drilling" and would be a Special Use in the Agriculture District.

Peoria County, Peoria: Our ordinance does not address this. It looks like we may need to take a look at it.

Piatt County, Monticello: Under our definitions: FARM: The ongoing removal of oil, gas, coal or any other mineral from property used for farming shall not cause that property to not be considered as used solely for farming. Under Special Use Permits on 5 Acres or more for A-1 Agriculture or AC Agriculture Conservation: Extraction of coal, sand, gravel, oil or other minerals. Our Ordinance does not address "fracking or hydraulic fracturing". We should probably add this to our Ordinance.

Randolph County, Chester: Oil wells and gas drilling operations are only permitted in agriculture and industrial zoned districts by Special Use and are not listed or shown to be permitted in our other districts of rural residential, community residential and commercial. It is also required by our ordinance that in addition they must have the IDNR permit as well. They must also meet the setback within the permitted districts.

Sangamon County, Springfield: We have oil and gas wells as a Permitted Use in our Agricultural District and mining as a Conditional Permitted Use in the Agricultural District...other than that, we do not address anything else along those lines.

Shelby County, Shelbyville: They have nothing in their zoning about oil or gas drilling and would therefore be exempt according to the zoning director.

St. Clair County, Bellville: St. Clair County Zoning Ordinance requires mineral extractions of oil and or gas drilling as a Special Use Permit in the Agricultural District.

Tazewell County, Pekin: We do not have a specific category called oil and gas drilling, but it would be considered a form of "heavy industrial" which is a permitted use in our I-2 Heavy Industrial District. If we were ever presented with this type of use in another Zoning District it would not be allowed, because it is not similar to other categories

unless possibly "mining" which is allowed as a Special Use in the A-1 Agriculture Zoning District. We may have to look into adding a category of this nature.

Woodford County, Eureka: Our ordinance does not address this situation. Should a company come in for the purpose of drilling/mining (gravel/borrow pits excluded) I would have to tell them we don't allow it even as a Special Use.

The following Illinois Counties do not have zoning regulations:

Adams, Alexander, Brown, Calhoun, Clark, Clay, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Green, Hamilton, Hancock, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Marion, Marshall, Mason, Massac, McDonough, Montgomery, Morgan, Pike, Pope, Pulaski, Richland, Saline, Schuyler, Scott, Union, Vermilion, Wabash, Warren, Wayne, White and Williamson.

Mr. Dick summarized that of the 17 responses from counties south of McLean County, 6 require a Special Use Permit in addition to McLean County. Some are clearly permitted uses. Three counties just do not address it and would have to do further research. Some counties believe that it would be a Special Use but they would need to add a category. Woodford County indicated that it was not listed and would not be allowed in any case.

Mr. Wendt clarified that the subject brought to the Committee was not Hydraulic Fracking. He noted that McLean County's Zoning Code is old fashioned with regards to allowing certain business types in McLean County. His main concern is that through our zoning code and procedures we are putting obstacles in the way of oil or gas extraction. Mr. Wendt would like the zoning ordinances to be reviewed and brought up to date to reflect a positive attitude towards these types of businesses. The State of Illinois is in the process of putting together rules and regulations for fracking in the State of Illinois. When completed they will have regulations that affect oil companies and how they extract gas or oil in Illinois. The County should then allow oil drilling based on State regulations.

Mr. Wendt advised that the type of oil drilling done in Illinois is not the same as what is heard about Hydraulic Fracking in New Jersey. The procedure now used in Illinois has been used for many years. At one time Illinois was second to Texas in oil; however oil in Illinois is much deeper. With low oil prices, oil production in Illinois was downplayed.

Water tables of levels in most areas in Illinois are about 450 feet deep. Oil in Illinois is between 1500 – 3000 feet. With current oil prices at \$100 a barrel, drilling in Illinois is now more financially feasible. Using the type of oil recovery now used in Illinois, drilling is now being done right through water areas with no problem.

Mr. Wendt would like the Committee to see if the County is putting obstacles in the way of businesses through our Zoning Codes that would detour businesses from drilling for gas and oil in McLean County. Oil production in Macon County has increased by 797% in the last 13 months. 100 wells have been drilled and 56 are in operation at this time.

Mr. Segobiano stated that he agrees that McLean County's Zoning Ordinance should be updated. It is his opinion that the County should move forward with exploring the Mahomet Aquifer as a water supply. He also believes in property rights. Any business has the right to drill with a Special Use Permit; however it is also imperative to consider the impact on other property owner's rights. This is where zoning rules and regulations come into effect. How do we give a property owner the right to drill and the drilling and not infringe on the neighboring property owners. The Committee needs to analyze exactly what we want to take to the Board and still protect and support all property owners.

Mr. Soeldner noted that at this point the Committee needs to review the County's Zoning Ordinance in regards to oil and gas drilling. Macon County says there is nothing in their Ordinance regarding oil and gas drilling. How can there be oil drilling currently being done in Macon County. Mr. Dick responded that that if wells are being drilled this year there were no permits issued. If permits were issued they would be on file. The State regulations are in the process of being updated. Taxes were added to Senate Bill 3280 and it did not pass in the last session. There is a chance it will be considered in the coming session. Hopefully better regulations will be a result. Whether the County requires a Special Use Permit or not, the State will still require permits.

Mr. Dick distributed a copy of the County's regulations. There are three different parts of how a Special Use is regulated. Currently this is how Hydraulic Fracturing would be regulated in McLean County:

1. The Definition; Oil and Gas Drilling/Refining defined as the subsurface extraction of oil or natural gas or the distillation of ethyl alcohol (ethanol) from agricultural crops and the processing of by-products from such distillation.
2. The Use Regulation – Regulated as a Special Use
3. Use Standard #26 specific to oil and gas drilling – Oil and gas drilling/refining operations shall not be located within 1,000 feet an existing R-1 or R-2 zoning district boundary line.

Mr. Dick advised that the McLean County Zoning Ordinance was originally adopted in 1966 and rewritten in 2000.

Mr. Erickson asked if the Legislation that is currently going through the State includes the requirement of a Special Use Permit for drilling oil and gas. Mr. Wasson responded that the Legislation is not directly addressing Special Use or non Special Use circumstances at the local level. Predominantly the Legislation addresses horizontal and hydraulic fracturing as a process for gas/oil exploration for the State. It will not specifically address local ordinances and regulations relative to zoning. Mr. Erickson added that local zoning ordinances will be left to the discretion of the County. Mr. Wasson agreed.

Mr. Wendt suggested scheduling a time for experts from the industry to come and discuss the type of permitting system that would encourage the safe drilling for oil and gas in McLean County and be prepared when Illinois has established regulations.

Mr. Segobiano stated that in all the Counties Mr. Dick contacted, one overriding factor of concern is the effect of drilling on the Counties' water supply. He would like to know the concerns and affects drilling has had on other localities water supply. Mr. Dick advised that different communities have different sources of public water supplies. Surface water supplies are not impacted in the same way as wells. The idea behind the Special Use is if there are unique circumstances around drilling in a particular area, these circumstances can be addressed. A Permitted Use can only require common use standards.

Mr. Erickson stated he is not opposed to listening to what experts have to say, however the County needs to be compatible with what the State is doing. Is there a way to have an idea where the State is going with oil and gas drilling? Mr. Wasson responded that the County has a fairly good idea of where the regulatory process is headed. There was almost universal support from environmental groups, the industry, and agriculture on the Bill that would regulate Hydraulic Fracturing that passed the Senate. A number of Amendments introduced in the House caused the failure of the Bill. The Bill does not address the question of Special Use vs Permitted Use. Special Use processes allow for the addressing of specific and unique circumstances with each permit. He noted that a Permitted Use only allows providing for universal stipulations. It does not allow for regulating based upon unique conditions. These are the two things the Committee is discussing today, whether there should be some consideration to change the current status of oil and gas drilling from Special Use within the Zoning Code and possibly Permitted Use.

Mr. Wendt pointed out that these concerns started because someone was interested in drilling and was discouraged because of the County's system of permitting. We need to have a system that would encourage safe drilling in McLean County not discourage safe drilling and still maintain the State regulations.

Mr. Soeldner asked if the required seven standards any different when there is a Special Use hearing. Mr. Dick responded that the same seven standards are required to be met for a Special Use.

Mr. Soeldner stated that he believes Mr. Wendt is trying to find out if the technology is there to assure that drilling will protect the water, gravel, wildlife etc. He asked if this is not the same thing the seven required standards actually do. Mr. Dick responded that the seven standards are there to protect people, water, gravel, wildlife etc.

Mr. Dick pointed out that a Permitted Use does not require a hearing. So unless there is a special regulation on a Permitted Use there is no way to assure that the special circumstance is safe. He added that this is the reason for the public hearing required by a Special Use Permit. Mr. Dick advised that the only way for public comment is with the Special Use process.

Chairman Gordon stated that Mr. Dick is referring to a particular individual application. Mr. Wendt's reference includes this but would be broader in scope. The process, if the Committee so desired, would be for the Committee to approve and recommend a proposal to the County Board and then the Board would have to approve sending a recommended change as a Text Amendment to the Zoning Board of Appeals (ZBA). The ZBA would then have to approve the Text Amendment and then it would come back to the County Board for final action.

Mr. Segobiano stated that the Committee is here today to discuss the entire Zoning Ordinance. It is Mr. Segobiano's opinion that Oil/Gas drilling should remain a Special Use Permit. A Special Use hearing gives citizens, supporters and opponents the opportunity to express their view. Whatever the Committee does, Mr. Segobiano expressed the importance of protecting not only the rights of the property owner wanting to drill but also the rights of the neighboring property owners.

Chairman Gordon stated that if the Committee is going to seek information from industry experts, it might be best to consider asking for written submissions of information and or prospective. This would give each Committee member the time to digest the information individually. This would reduce the amount of hours spent in Committee meetings. The Committee then would make the decision whether to propose to the County Board a recommendation for a Text Amendment.

Chairman Gordon advised that before the Committee makes and decisions, gathering as much information as possible is the next step. Information has been brought to the attention of County Staff. The Committee could make known they are seeking to hear from any interested party or organization on water, safety issues, property rights, etc. with regards to Oil/Gas drilling that would give the Committee a

good solid bases for making a decision to move in the direction of a Text Amendment or not to recommend a Text Amendment.

Mr. Erickson advised that when we finally get to the point of a possible Text Amendment, a written summary of where the State is going is necessary. The County cannot have anything that is less restrictive than State law.

Mr. Wendt repeated that the problem is requiring permitting. If the system is discouraging any oil drilling in McLean County we need to look at what changes can be made to encourage oil/gas drilling in McLean County. The safety is a totally different situation. If the State regulations do not sufficiently cover the safety issues, the County can then include extra safety restrictions. Mr. Wendt added that oil drilling will be beneficial to the entire Community by providing jobs and revenue to the County.

Mr. Segobiano stated that we do not want to put obstacles in front of anyone wanting to drill but at the same time we do not want to present obstacles to the property owner next door. He noted that he is receptive to written information being submitted to the Committee. He would also like to hear the voice of the people.

Chairman Gordon stated that the Committee could start with written information.

Mr. Soeldner asked what exactly the obstacles Mr. Wendt is referring to are. He asked Mr. Wendt to see if he can obtain the information or have the industry submit the information to the Committee. Is it a financial permit fee or is it the fact that the public is made aware of the drilling. Until we know what the obstacles are the Committee cannot address them.

Chairman Gordon advised that in the process of gathering information, we are not necessarily moving toward a precise decision point. It is his opinion that no decision should come from the County until after we know exactly what if any actions the Legislation has taken. The earliest the Committee could consider this is December, 2012.

Mr. Wendt reiterated that the County needs to find the roadblocks. One interested party wanted to drill in McLean County, got frustrated and left. He now has a well in Macon County. This is the issue we need to research so that changes can be made in the system to encourage oil/gas drilling in McLean County.

Mr. Dick advised that the basic difference between Macon County and McLean County is that in Macon County a Special Use permit is not required to drill. In McLean County a Special Use Permit is required. Requiring a Special Use is much more difficult than being able to drill without any permit at all.

Mr. Wendt asked what is required in McLean County to drill water well. Mr. Dick responded that a permit from the Health Department is required. Mr. Wendt asked if you have to go through a public hearing. Mr. Dick advised that a public hearing is not required. Mr. Wendt asked what is the difference between a water well and oil/gas drilling.

Mr. Segobiano noted that with his many years on the County Board, he is not aware of anyone being discouraged or rejected from drilling oil. Mr. Segobiano is in total support of a required Public Hearing.

Mr. Erickson stated that knowing what the State is doing, the County could set up a Special Use process that in practice is more restrictive than what is done under State law.

Hearing no further discussion, Chairman Gordon continued with the Illinois American Planning Association chapter Conference in Champaign-Urbana on September 19-21, 2012. More information is available at [www.ilapa.org](http://www.ilapa.org) a unique track developed specifically for plan commissioners and other elected and appointed officials will be on Thursday, September 20<sup>th</sup>.

Mr. Dick stated that if the Committee is interested in attending to contact him.

Chairman Gordon stated that the next meeting of the Land Use and Development Committee is September 6, 2012.

Mr. Wendt asked if the County has a noxious weed ordinance. Mr. Wasson responded that the County does not currently have a noxious weed ordinance. There are a very limited number of actual weeds designated as noxious. The use of a Noxious Weed Ordinance is not the best way to address these issues. There are statutory provisions to address either by Townships and or through County Government specific buildings that are designated as dangerous. Homeowners are notified through the Zoning Department; however properties in foreclosure create some problems. Legislatively is the best way. A Bill sponsored by Metro Counties addresses the financial responsibilities during the foreclosure process. The Bill was unsuccessful. The Building and Zoning Department inspects the properties. The State's Attorney Office has looked at avenues in an attempt to address the problem relative to the foreclosure hearings.

Mr. Wendt stated that the Townships can mow the property and then bill the landowner. He asked if this can be done County wide. With all the current foreclosures, we may see more of these types of situations. Mr. Wasson responded no, but that the County is actively pursuing specific remedies. He encouraged the Board members, as they become aware of these properties to communicate the information to the County

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Building and Zoning Department and the Township Officials. We are working in unison with the Township Officials to resolve these issues.

Chairman Gordon asked if there was any other information to come before the Committee.

Chairman Gordon adjourned the Committee Meeting at 5:40 p.m.

Respectfully Submitted,

Diana Hospelhorn  
Recording Secretary