

## Minutes of the Land Use and Development Committee Meeting

The Land Use and Development Committee of the McLean County Board met on Thursday September 6, 2018 at 3:30 p.m. in Room 400, Government Center, 115 E. Washington Street, Bloomington, Illinois.

Members Present: Chairman Chuck Erickson, Members, Don Cavallini, Laurie Wollrab, Jacob Beard, Ryan Scritchlow

Members Absent: Members George Wendt and Mark Johnson

Other Board Members Present: Members George Gordon, Susan Schafer and Catherine Metsker

Staff Present: Mr. Bill Wasson, County Administrator, Mr. Eric Schmitt, Administrative Services Director, Ms. Jessica Woods, First Civil Assistant State's Attorney, and Ms. Julie Morlock, Recording Secretary

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

Others Present: Anna Ziegler and Michael Swartz of the McLean County Farm Bureau; Mr. and Mrs. Jim Thoennes

Chairman Erickson called the meeting to order at 3:30 p.m.

Mr. Erickson presented the minutes from the August 2, 2018 regular meeting and March 20, 2018 and June 19, 2018 special meetings for approval.

Motion by Cavallini/Scritchlow to approve the minutes from the August 2, 2018 regular meeting and March 20, 2018 and June 19, 2018 special meetings of the Land Use and Development Committee.  
Motion Carried.

Chairman Erickson presented the bills as of September 3, 2018 reviewed and recommended by the County Auditor. The prepaid total and fund total is \$6,770.80.

### MCLEAN COUNTY BOARD COMMITTEE REPORT

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AS OF 9/3/2018

#### EXPENDITURE SUMMARY BY FUND

##### Land Use Committee

FUND	FUND TITLE	PENDING TOTAL	PREPAID TOTAL	FUND TOTAL
0001	GENERAL FUND		\$6,770.80	\$6,770.80
			<hr/> \$6,770.80	<hr/> \$6,770.80



COMMITTEE CHAIRMAN

Motion by Scritchlow/Beard to recommend approval of the Land Use and Development Committee bills.

Motion carried.

Chairman Erickson confirmed with Mr. Wasson there were requests from the public to speak to the Committee. Mr. Wasson indicated the first request was from Mr. Jim Thoennes who wanted to address the Committee concerning subdivisions and special uses relating to properties near his home. Mr. Erickson asked Mr. Thoennes to come forward to address the Committee. There was clarification by Mr. Erickson that a request to speak, per County Board Rules did not allow for questions and answers between Committee members and the requestor. Mr. Thoennes expressed concerns regarding the building of additional homes near his home. He stated that he did not feel his concerns were being taken seriously. He stated he had talked with Mr. Murphy and Mr. Wasson about the matter at great length but wanted a decision on the matter from the Committee. Mr. Thoennes told the Committee his timeline of the situation from being informed they could not build another home on the Cowden tract, to the land being sold, to other another home being allowed on the tract. Mr. Erickson stated that at the end of the meeting there would be an explanation from County Administration as to the Cowden Property. He stated that he and the Committee did take Mr. Thoennes concerns seriously and had followed up with Administration. Mr. Thoennes indicated his wife would like to address the Committee. Mr. Erickson indicated she had not requested to address the Committee but with the consent of the Committee she was allowed to speak. Ms. Thoennes stated that she wanted the minutes from July meeting corrected to reflect "Kenneth Thoennes" had spoken and not "Kent Dennis". Mr. Erickson thanked her.

Mr. Erickson invited Mr. Michael Swartz of the McLean County Farm Bureau to come forward and address the Committee. Mr. Swartz stated that the Farm Bureau represents farmers in the community and the Farm Bureau's policy supports land-owners right to have solar projects constructed on their property. He indicated he was addressing the Committee regarding the proposed text amendment language and after discussions with Staff a few modifications had been made to the language that add clarify for the landowners, solar companies and the County. He asked that the modified language involving security financing and timeline in which the solar company reviews and revises the decommissioning costs before them tonight be presented to the Zoning Board. He also recommended adding the word "construction" to the first sentence of the first paragraph. Mr. Erickson thanked him.

Mr. Dick provided the Committee with a copy of the revised language for their review.

Chairman Erickson presented for action a request by Alyce Gilmore by Kathy Kinkade, Power of Attorney, for a waiver of preliminary plan requirements and a one-lot subdivision final plat for the A. Gilmore Subdivision, File No. S-18-07. Mr. Phil Dick presented the proposal to the Committee and indicated it has been signed off on by the Health Department and County Engineer.

Motion by Cavallini/Scritchlow to recommend approval of request by Alyce Gilmore by Kathy Kinkade, Power of Attorney, for a waiver of preliminary plan requirements and a one-lot subdivision final plat for the A. Gilmore Subdivision, File No. S-18-07  
Motion Carried.

Chairman Erickson presented for action a request by Land Use Committee for a text amendment of Article VI Section 350-43.00 (3) (Use Standards for a solar power generating facility) of the Zoning Ordinance. Mr. Phil Dick went over the language and indicated that the word "construction" requested by the Farm Bureau was added but in a different location in the amendment and felt it would meet their requirement. Mr. Erickson went over the history of this amendment regarding decommissioning standards of solar farms. He stated that the Zoning Board of Appeals had already started adding these conditions to the issuance of permits. Mr. Erickson confirmed the process of sending this to the Zoning Board of Appeal for codification and then back to the County Board for final approval. Ms. Wollrab indicated she was glad to see proposed revisions but still had concerns with language as she did not think we should vary from the Agricultural Impact Mitigation Agreement ("AIMA") language. She provided the example of "registered professional engineer" in proposed language but proposed that the AIMA language "professional engineer who is agreed upon by the County and the facility owner" would be better language. She stated that her other concern was under decommission cost section and the language "when needed" regarding the review and revision of decommissioning costs. She felt the language was too vague and should be more carefully define it. Mr. Beard asked if she was also adding "agreed upon" wording. Ms. Wollrab said that she was not adding, but would rather cite back to the AIMA language. Mr. Wasson stated that the word "registered" could be removed. Mr. Wasson also cautioned against just referring back to AIMA document in our Amendment as the AIMA document had not been finalized and changes could still take place to that document. There was discussion among Committee members regarding the language. Mr. Swartz was asked to come forward to clarify removal of "registered". Ms. Wollrab also asked about review and revision language "when needed". Mr. Wasson stated they would suggest that language be changed to read, "the decommissioning cost estimate will be reviewed and revised by facility owner at least after the 10<sup>th</sup> year of operation and each 5 years thereafter."

Motion by Wollrab/Beard to amend the proposed text amendment to strike words "registered" and "when needed but estimate must occur".

Motion Carried

Ms. Schafer expressed a concern about language that states land will be put back in original condition as she had not seen any evidence that the land can be returned to original condition. She asked about the procedures to have the Zoning Board of Appeals look into that language. Mr. Phil Dick indicated went over some of the decommissioning language in the Ag Mitigation Agreement including compensation to damaged property and language to protect the soil. Ms. Schafer said she would like to see some evidence that land has been protected. She asked if there had been studies done to show the land could be put back to its original state. Mr. Dick stated that he was not aware of any studies. He said that Zoning Board would also ask these questions if they felt there was concern about returning land to original condition. Mr. Cavallini asked if there is a system to advise companies of available land that is not good for farming but could be utilized for solar farms other uses. Mr. Erickson stated that he felt we are getting away from text amendment questions. Mr. Wasson stated that recommending to companies about specific available land would be more of a role for the Economic Development Council and not something we would want the Zoning

department to do. Mr. Beard said he would be interested to see if there were studies out there that would give landowners a better idea of how land can be restored.

Mr. Scritchlow asked if any of the items that are in the State's AIMA are negotiable with the Department of AG. Mr. Dick said some parts are negotiable. Mr. Scritchlow asked for confirmation that AIMA is only part of building permit process. Mr. Dick said confirmed it would have to be in place for a building permit. Mr. Scritchlow asked if we could make the signed AIMA part of the ZBA application instead of part of construction, so if something was negotiated they would be aware of it. Mr. Dick stated that he did not feel that would work and provided current example where may only be 50% of those applied for are actually built. Mr. Dick stated these things in the Text Agreement were things that were not negotiable. Ms. Ziegler was invited to come up and speak to the matter, she stated that the way State law is written wind farms under state statute have to file their AIMA as part of the special use permit process, but state statute reads different for solar and they have to file as part of construction permit process. Mr. Scritchlow asked if we could not change it because it is state law. Ms. Ziegler said that while you might have the option to write as part of zoning process, companies would probably argue because it is not in line with State law. Mr. Wasson stated that we try to stay away from inconsistencies with State statute as it could possibly create unnecessary litigation.

Ms. Wollrab stated that the Farm Bureau stated that they supported owners' rights to utilize property as they choose and she was also a supporter of farmer's rights to utilize their land as they choose. Ms. Wollrab quoted the Ag Impact Mitigation Agreement's standards and policies required by the Illinois Department of Agriculture to help preserve land. She stated that it looked like a wide variety of individuals were consulted on how best to return the land to good farm land. Ms. Metsker asked who would enforce the Ag Mitigation Impact Agreements. Mr. Wasson said the Department of Agriculture would have responsibility. Ms. Metsker questioned that they had the staff to enforce this rule. Ms. Metsker also agreed with Mr. Scritchlow that she was concerned about items being negotiated after an application had been approved. Mr. Wasson stated that the decommissioning part of AIMA cannot be negotiated. Ms. Wollrab stated that since the landowner had an interest in the land being returned to useable farm land they would probably be the one to ensure the decommissioning was taking place per the agreement. Ms. Metsker questioned what would happen if it was not put back the way it was and stated that she just wanted it confirmed that the County did not have responsibility to monitor this. Mr. Erickson stated there is incentive for farmer to protect his land and he could not take away risk for farmer to decide what to do with their land.

Motion by Beard/Scritchlow to recommend approval of a request by Land Use Committee for a text amendment of Article VI Section 350-43.00 (3) (Use Standards for a solar power generating facility) of the Zoning Ordinance As Amended  
Motion Carried.

Chairman Erickson presented for action a request by the Department of Building and Zoning to approve a "Proclamation of October as Community Planning Month in McLean County

Illinois" in conjunction with the celebration of National Community Planning Month. Mr. Dick indicated this is in conjunction with Town of Normal, City of Bloomington, Regional Planning Commission.

Motion by Cavallini/Scritchlow to recommend approval of request by the Department of Building and Zoning to approve a "Proclamation of October as Community Planning Month in McLean County Illinois" in conjunction with the celebration of National Community Planning Month.

Motion Carried.

Chairman Erickson indicated there would be an Illinois Association of County Officials Planning and Zoning Seminar on Thursday, September 20 at the Starved Rock Lodge and Conference Center in Utica, IL. Mr. Dick indicated Mr. Cavallini was registered and stated that if anyone else was interested in attending to please contact him.

Chairman Erickson asked Mr. Wasson to address the positions filled report. Mr. Wasson stated there were no positions filled in the last 30 days under the purview of the Committee.

Chairman Erickson stated that when Mr. Thoennes came to the Committee in July he had consulted with various Committee members as to what should be done and it was decided the Committee would ask Administration to give an explanation as to how they viewed events. Mr. Erickson stated that the Committee has not ignored the situation, but also clarified that as policy makers they do not always know what the law is on a particular matter so the Committee asked Administration and the State's Attorney to look into events. He clarified that all the Committee can provide is an explanation and noted that the explanation might not be acceptable to all parties involved. He said it was decided to give the explanation herein public forum. Mr. Erickson turned the floor over to Mr. Wasson.

Mr. Wasson stated that at the request of the Committee, Administration and the State's Attorney looked at the application process and law to help explain the situation. Mr. Wasson pointed out the two controlling factors in this matter including a Zoning Ordinance that allows one single family residence per 40 acres of land unsuitable for farming as the property existed on February 11<sup>th</sup> 1974 and a statutory provision that exempts landowners with more than 40 acres of farmland from obtaining permit for development. At this point Mr. Erickson asked that Mr. Thoennes be provided an outline from Land Use Committee packet. Mr. Wasson then utilized slides to show the 209 acre Cowden tract in 1974 including farmland areas and timber areas unsuitable for farmland, when special use permits were issued for homes and where they were placed on the tract. He stated that when the fifth house was built under the exception for unsuitable for farming was then they were probably told they could not put another home on the land in this manner per the first controlling factor of only one residence per 40 acres of land that is unsuitable for farming as the tract existed in 1974. Mr. Wasson stated that at this point there were five parcels with homes under this provision and one large farmland parcel with the original homestead. He stated that Mr. Smith then sold off the farmland parcel and kept the homestead separate. Mr. Wasson stated McLean County has not historically restricted a farm owner from severing a residence from the remainder of farmland but they have to file a change of use for the residence. Mr. Wasson

stated that when Mr. Smith sold property he was told he needed to file a change of use on the residence, but he has not done that as of yet. Mr. Wasson stated that upon the sale of the approximately 90 acres in farm ground the land then fell under the statutory provision or exemption where a permit for development is not required if they own more than 40 acres of farmland, which allowed the new owner the right to build a home on the land. Mr. Wasson stated this is an example of situations changing based on the sale of parcels. Mr. Wasson expressed his understanding of how confusion could take place and how someone could figure a way to utilize ordinances to their advantage.

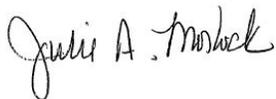
Mr. Erickson indicated he and Ms. Wollrab had received this explanation and the assurance from legal counsel that the law had been followed. Ms. Woods stated that state statute does not allow us to require permits for a farm homestead on over 40 acres of farm land, so there is nothing we can write in our ordinances that would allow us to do that. She stated that because the remaining land was more than 40 acres and did not have a homestead they are entitled to a homestead. Mr. Erickson reiterated that the Committee took Mr. Thoennes' concerns seriously, followed up on them and had been assured that the law had been followed. He said he cannot change this, and that Mr. Thoennes had the right to get his own legal opinion. Mr. Thoennes was allowed to make a final statement. Mr. Thoennes stated there are more homes there than they indicated so he felt the legal opinion was wrong because of that information. Mr. Erickson reiterated that legal counsel had told him the law had been followed. Mr. Thoennes reiterated that the opinion given was based on the wrong facts. Mr. Erickson stated that Mr. Thoennes could seek his own attorney's opinion. Mr. Thoennes expressed his displeasure. Mr. Erickson apologized but indicated that he and the Committee had done all they could with this matter and needed to move on to the next item on the agenda.

Chairman Erickson indicated that the next meeting would be October 4, 2018. Mr. Erickson asked if there was anything further from the Committee; hearing nothing, he asked for a motion to adjourn

Motion by Scritchlow/Cavallini to adjourn the September 6, 2018 Land Use Committee meeting.  
Motion Carried.

The meeting was adjourned at 5:07 p.m.

Respectfully Submitted,



Julie Morlock  
Recording Secretary