

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
July 28, 2010**

The Planning and Zoning Committee of the DeKalb County Board met on July 28, 2010 at 7:00 p.m. in the Conference Room East located in the DeKalb County Administration Building. In attendance were Committee Members Ken Andersen, Larry Anderson, Marlene Allen, Michael Haines, John Hulseberg, Ruth Anne Tobias, Pat Vary, and Stephen Walt. Also, in attendance were Greg Millburg, Peter Smith, and staff members Terry Hannan, John Farrell, Paul Miller, and Rebecca Von Drasek.

Ken Andersen, Planning and Zoning Committee Chair, called the meeting to order, and noted that all Committee members were present.

APPROVAL OF AGENDA

Ken Andersen noted that the published agenda included item six "Discussion Item - Vulcan Special Use Permit", although this was not on the agenda included in the Members' packets.

Mr. Walt moved to approve the agenda, seconded by Mr. Larry Anderson, and the motion carried unanimously.

APPROVAL OF MINUTES

Ms. Vary asked for an addition to the seventh paragraph of page five of the June 23, 2010 minutes, to add the Hearing Officer's recommendation to the end of the sentence, "The majority of the Committee Members decided to leave the condition with the language as written by the Hearing Officer, *which read as: Petitioner has proposed certain perimeter berms and landscaping which appears to be adequate, however, all of the existing berms along Barber Greene Road shall be brought into compliance with the standards that have been established within 5 years. Additional new berms along Barber Greene and Airport Roads shall be installed 100 feet in advance of the mining operation as determined by annual aerial views to be supplied to the Zoning Department by Vulcan, and in any event shall be completed within 15 years.*"

Mr. Haines questioned if the Committee voted on the condition regarding hours of operation, noted in the second paragraph on page five of the June 23, 2010 minutes. Staff responded that the Committee's deliberation on each condition were considered preliminary to the motion and vote on the Special Use Permit recommendation as a whole. Staff agreed to review the discussion and report on how each Committee members voted. At the June 23, 2010 meeting Mr. Haines, Mr. Hulseberg, Mr. Walt, and Ms. Vary indicated they were in favor of Mr. Haines' suggested revisions to the condition, which was adopted and read as follows: "*The hours of operation for the quarry shall generally be from 5:00 a.m. to 9:00 p.m. The quarry shall not operate or ship 24 hours a day on more than 40 days per year, and shall not operate or ship on Sundays or Federal holidays except in emergency situations. In the event that the quarry intends to operate for 24 hours in any given day, prior written notice shall be given 24 hours in advance*"

to the Planning, Zoning and Building Department, unless an emergency precludes such advance notice.”

Following these two issues from the Committee members staff agreed to review and double check the June 23, 2010 meeting minutes for clarification.

Mr. Hulseberg moved to approve the minutes of the June 23, 2010 meeting of the Planning and Zoning Committee as amended, seconded by Mr. Haines, and the motion carried unanimously.

SPECIAL USE PERMIT

Mr. Miller explained that Terry Hannan, Superintendent of DeKalb County Forest Preserves, filed a request for a Zoning Map Amendment, in accordance with the requirements of Section 10.03 of the DeKalb County Zoning Ordinance, in order to rezone a five-acre farmstead, located approximately 1,500 feet south of the intersection of Pleasant Hill and State Rte. 72, in Kingston Township, from A-1, Agricultural to FP/C, Floodplain/ Conservation District, in order to reflect the proposed conservation, educational, and recreational uses of the property. Mr. Miller observed that all of the Forest Preserve District and State DNR properties in the County are zoned FP/C. The required public hearing was conducted on July 8, 2010 by DeKalb County Hearing Officer Kevin Buick, at which the petitioner presented exhibits and testimony detailing the intent to relocate and reconstruct on the subject property the Miller-Ellwood Cabin to serve as a meeting place and education center for the Forest Preserve District. A parking lot and outhouse facilities would also be constructed. Mr. Miller explained that the requested FP/C District would allow more active recreational uses than are accommodated in a “conservation area” within the A-1, Agricultural District. Mr. Miller noted that no members of the public spoke at the hearing and that the Hearing Officer recommends approval of the Zoning Map Amendment.

Ms. Vary noted that the application did not include any sanitation plans. Mr. Hannan responded that comfort stations (outhouses) would be placed on the property.

Ms. Vary also inquired if the signs would conform with County regulations. Staff noted that they would be required to meet the regulations.

Mr. Larry Anderson asked if the access easement was indicated on the site plan. Mr. Hannan noted that the easement was depicted on the site plans submitted.

Mr. Haines asked if the Forest Preserve could be exempt from future rezoning requirements since it is another taxing body. Staff noted that other taxing districts, such as the townships, are also required to follow the County’s regulations, as the County itself would be if it constructed a new facility in an unincorporated area. Mr. Miller emphasized that the fees are waived but that these districts lack a State exemption from the County’s planning authority.

Mr. Haines moved to recommend approval of the Map Amendment for the property from A-1, Agricultural to FP/C, Floodplain/ Conservation District, seconded by Mr. Hulseberg, and the motion carried unanimously.

Mr. Ken Andersen noted that the issue would be go to the County Board for a final vote on August 18, 2010.

DISCUSSION ITEM - Vulcan Special Use Permit Amendment

Mr. Ken Andersen introduced the discussion and explained at the July 21, 2010 County Board meeting the Committee was directed to discuss with the State's Attorney the Special Use process and procedures, as well as the ramifications of the withdrawal by Vulcan from the Special Use permitting process.

Mr. Miller informed the Committee that he and John Farrell were present to answer their questions about the Vulcan application and subsequent withdrawal.

Mr. Walt noted that he had sent Mr. Miller some questions via e-mail. He noted that the one of the questions was concerned with the conditions in the 1991 Ordinance that specifically tied the Special Use Permit to the Larson family. Mr. Miller first responded by pointing out that the County used to give Special Use Permits to property owners, however, this could be construed as biased and unfair. Therefore, for the past decade staff has consistently advised the Committee and County Board not to tie approval of a special use to any specific owner, and instead encouraged that such approvals be considered to run with the land regardless of ownership. Mr. Miller also observed that the condition and ordinance that Mr. Walt was reading from related specifically to the pieces of the quarry that were added in 1991, and Vulcan has testified that MSJ Larson is still the owner of those pieces. Mr. Walt noted that the although that might be the appearance on paper he questioned the Larson involvement in the actual operations. Mr. Walt asserted that Vulcan's withdrawal appears to challenge the spirit of zoning regulation.

Mr. Walt asked if the County could initiate the Special Use Process. Mr. Miller responded that the County certainly can initiate a Special Use, for instance to create a new County-owned facility. In that case the County would be required to submit an application the same as any other petitioner. Mr. Miller emphasized, however, that the County Board lacks the authority to initiate a Special Use Permit on a privately-owned property. He acknowledged that the County Board does have the authority to revoke a Special Use Permit if an operator was determined not to be in compliance with their ordinance or that it had become a nuisance.

Mr. Haines asked if Vulcan was the authorized agent for the Larson owned portions of the quarry. Mr. Miller responded that Vulcan was authorized to seek the Special Use Amendment by the MSJ Larson.

Mr. Haines noted that the language in the previous ordinances was somewhat ambiguous and may be insufficient to regulate the use. Mr. Miller noted that the quarry had operated at the site for decades and that the Special Use revocation process should only be initiated if there is evidence of a nuisance.

Ms. Tobias agreed that staff could not assume an operation was a nuisance without complaints or an obvious problem with the operations.

Mr. Haines asked staff to clarify the method that an issue could be sent for a rehearing. Mr. Miller assured the Committee that staff would enforce, as a matter of policy, the approach that only the County Board or Planning and Zoning Committee has the authority to remand an issue back to the Hearing Officer to re-open a public hearing.

Mr. Haines noted that he felt that the issue being sent back to the rehearing could have been a conflict of interest. He asked staff if there was a litmus test for determining when as elected officials they were to close to a particular issue. Mr. Farrell responded that this was an individual judgement call, the law only specifically prohibits a “pecuniary” interest.

Mr. Walt asked staff to investigate the revocation procedure against Vulcan’s Special Use Permit.

Mr. Miller also offered to reach out to the petitioner and ask them to come to a Committee meeting to informally discuss the conditions which caused them to withdraw their application. Mr. Walt agreed but noted that he still wanted the revocation investigated so that the Committee members were aware of all of their options.

Mr. Hulseberg asked that staff review other communities’ ordinances governing quarries to compare DeKalb County’s requirements. Mr. Miller offered that when writing the staff report one aspect of his research included review of other jurisdictions’ regulations, in the form of an American Planning Association report on quarry regulation.

Mr. Haines stated that the County is attempting to strike a balance between neighboring property owners and the quarry operators. He stated that it was important for the County to protect citizens, as well as encourage economic growth. Mr. Haines observed that it appeared by the petitioner’s withdrawal that since they did not receive everything they wanted they quit the process and disregarded the County’s effort to strike a balance.

Mr. Miller indicated that the petitioner had suggested they could not be competitive with some of the conditions recommended by the Committee.

Ms. Vary noted that the petitioner’s first letter stated that they would not operate or ship for a full 24-hour period.

Mr. Larry Anderson agreed and noted that this was brought up during the Committee’s original discussion with the petitioner.

Ms. Vary also noted that Vulcan had objected to the berm construction timeline. She agreed that an informal discussion would better educate everyone on the points of contention.

Mr. Hulseberg asked that the Committee members be given a copy of the letter from Vulcan which indicated their withdrawal.

Mr. Walt reiterated that he would like the State's Attorney and staff to research the revocation of the existing Special Use ordinances.

Ms. Vary indicated that she was surprised that a petitioner could withdraw at any point in the process, and she noted this was the first time she could remember a withdrawal after the Committee had sent something to the County Board. Mr. Miller suggested that if the Committee would like to have this changed maybe something could be written in the Zoning Ordinance stating that the option to withdraw shall cease once the County Board agenda is set. As it exists, however, a petitioner can withdraw an application up to the point where the County Board is about to take action.

Mr. Ken Andersen recognized that an attorney for the petitioner, Peter Smith, was present at the meeting.

Mr. Smith indicated that his clients may be interested in a discussion with the Committee.

The Committee briefly discussed the procedures for a Special Use Permit and noted that there was some misunderstanding on why the public hearing was reopened. Mr. Walt indicated that he was aggravated by the process. Mr. Miller reasserted that this allowed the process to be the most open and accessible. The Committee also discussed the process by which the Vulcan hearing was reopened.

Mr. Slack, a neighboring property owner to the Vulcan site, was recognized. He questioned if there was a compelling reason to have reopened the hearing, and noted that in regards to the hours of operations that he wants Vulcan to take Sundays off.

Mr. Ken Andersen acknowledged that he had agreed to the reopened hearing because a discussion on the 24 conditions should be done where the neighbors could make comments.

Mr. Miller recapped the Committee's discussion by listing the items the Committee had requested: (1) To research other quarry regulations, especially hours of operation; (2) Provide the Committee with a copy of the Vulcan withdrawal letter; (3) Invite Vulcan's representative for an informal discussion about the conditions of operation; (4) Mr. Walt requested that the recording from the April meeting be sent out (Mr. Walt indicated after the July 28, 2010 meeting he no longer felt it necessary to listen to the recording); (5) Staff was directed to revise the regulation to state the point in the Special Use procedure that a withdrawal is no longer an option; (6) Mr. Farrell was requested to research the revocation procedures and to review the existing ordinances against the ownership requirements.

MONTHLY REPORT

Mr. Miller informed the Committee that the Evergreen Village mitigation project was moving forward. The required public notice was sent out by the Illinois Environmental Management Agency (IEMA). The Department of Commerce and Economic Opportunity (DCEO) has finally established a process by which grant applications can be made; the County is seeking funding from DCEO for the 25% local match on the Evergreen Village mitigation project.

Mr. Hulseberg reiterated his hope that the relocation assistance for residents will cover at least six months of expenses.

ADJOURNMENT

The Planning and Zoning Committee is next scheduled to meet August 25, 2010 at 7:00 p.m. in the Conference Room East.

Ms. Vary moved to adjourn, seconded by Mr. Walt, and the motion carried unanimously.

Respectfully submitted,

Kenneth Andersen
Planning and Zoning Committee Chairman

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