

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
June 23, 2010**

The Planning and Zoning Committee of the DeKalb County Board met on June 23, 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, Michael Haines, John Hulseberg, Ruth Anne Tobias, Pat Vary, and Stephen Walt. Also, in attendance were Derke Price, Richard Spry, Peter Thomas Smith, Kevin Huey, Frank Camodeca, Dan Larson, Mike Rollinger, Roger Craigmile, Suellen Byrd, William Byrd, Jill Downer, Rich Szymonski, and staff members Bob Drake, Paul Miller, Toby Petrie, Christel Springmire, and Rebecca Von Drasek.

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

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

Mr. Hulseberg moved to approve the minutes of the May 26, 2010 meeting of the Planning and Zoning Committee, seconded by Mr. Haines, and the motion carried unanimously.

SPECIAL USE PERMIT

Mr. Miller briefed the Committee on the Special Use application filed by Suellen Byrd, co-owner of property located at 28352 State Route 23 in Sycamore Township. He explained that the requested Special Use Permit was to allow the operation of a home day care on the subject property in the A-1, Agricultural District. He noted that the application had been filed in accordance with the requirements of Section 9.02.B. of the Zoning Ordinance, and that the home day care use had been in operation for several years, but had no Special Use Permit to authorize it.

Mr. Miller reported that the DeKalb County Hearing Officer, Ron Klein, conducted a public hearing on the proposed Special Use Permit on May 27, 2010. At the hearing, the petitioner stated that she has provided day care service from the subject property since 2002, and that she is fully licensed as a day care provider by the State. Regular safety inspections are conducted by the State Fire Marshall and DCFS. The subject property has two drive entrances to facilitate drop-off and pick-up of children, and that the property will have four parking spaces. The petitioner provided letters of support for the business at the hearing and no members of the public spoke in favor of or in opposition to the proposed use. Mr. Miller noted that the Hearing Officer submitted his Findings of Fact and recommended approval of the Special Use Permit. Mr. Miller said that if the Special Use Permit is recommended for approval, staff recommends as

a condition that the use be required to operate in substantial accordance with the details of the application.

Mr. Ken Andersen asked about the Zoning Ordinance requirements to pave the parking areas. Mr. Miller reminded the Committee that staff frequently waives the requirement to pave parking areas in the A-1, Agricultural District provided the petitioner makes a written request justifying the reasons for such a waiver. Mr. Miller added that staff does not have the authority to waive the State requirement of a hard surfaced handicap accessible parking space with signage and striping.

Ms. Vary asked if an additional condition should be added to require that the facility maintain State licensing and have regular inspections by the State Fire Marshal. Mr. Miller responded that both are required without the need for an overt condition.

Mr. Walt moved to recommend approval of the Special Use Permit for a home day care with the condition that the operations be in substantial accordance with the application, seconded by Mr. Larry Anderson, and the motion carried unanimously.

DISCUSSION ITEM

Mr. Miller noted that recent questions related to the Building Code requirements that attend the conversion of single-family residences to other uses via Special Use Permit. Specifically, the possibility of using a single-family residence as a bed and breakfast, and the use of a residence as a home day care, have raised questions related to whether the change in use necessitates bringing the structure into compliance with the fire resistance and protection regulations for the new category of use. Some of the required changes (for instance, fire sprinklers) can be expensive and even cost prohibitive. Mr. Miller referenced his June 9, 2010 memo which detailed staff's review of the regulations. Most notably, Mr. Miller explained that Appendix M of the International Residential Code may specifically allow for home day care to be considered within the Residential Building Code versus the International Building Code (which applies to all uses except residential), and that the standards of Appendix M do not require sprinklers. Mr. Miller noted that Toby Petrie, Chief Building Inspector, was present if the Committee had any specific questions. Finally, he noted that more stringent standards for fire code will likely be required even for single family residences in the near future.

Ms. Tobias asked why the Appendix was not adopted along with the County's adoption of the Building Code. Mr. Petrie explained that along with the Codes there are numerous appendixes which may or may not be appropriate for DeKalb County. Mr. Miller further explained that the appendixes include many uses which do not take place in unincorporated DeKalb County.

Ms. Vary confirmed that the Appendix M only related to home day care and not applicable to bed and breakfast (B&B). Mr. Petrie agreed. Mr. Miller noted that staff anticipated a future discussion on the B&B issue but that there was not an Appendix that permits the B&B to be considered under the Residential Code.

The Committee briefly discussed the operations of B&Bs elsewhere in the State, and staff agreed to further review the County's options.

Mr. Haines moved to recommend approval of an Ordinance adopting Appendix M of the International Residential Code as part of the County's Building Code, seconded by Ms. Vary, and the motion carried unanimously.

SPECIAL USE PERMIT AMENDMENT

Mr. Ken Andersen read a brief statement regarding the time line of events since the initial application by the petitioner, Vulcan Materials, for an Amendment to the Special Use Permit for the former Elmer Larson Quarry in Cortland Township. The petitioner is seeking to consolidate the eight ordinances under which it currently operates, and to update conditions of approval. Mr. Andersen noted in his statement that after the first public hearing staff received a letter from the petitioner discussing the Hearing Officer's Findings of Fact, the public hearing was re-opened and the Hearing Officer supplied the County with revised findings and recommended conditions.

A detailed discussion was held regarding the process by which the application was sent back to the Hearing Officer to re-open the public hearing. There was disagreement over which entity, the County Board, the Hearing Officer, the State's Attorney, the Zoning Administrator, or the Chairman of the Planning and Zoning Committee, or some combination, has the authority to send an application back to the Hearing Officer for further review. Mr. Walt opined that only the County Board has such authority. Questions were raised about the consistency of the interpretation that the Vulcan hearing could be re-opened without a Planning and Zoning Committee vote to do so, when in the past the Committee has taken such actions. Mr. Miller explained that while the County Board clearly has the authority to remand an application for Special Use back to the Hearing Officer, the Zoning Ordinance does not make this an exclusive right. Further, the regulations indicate that the Hearing Officer may require additional notices be published, which staff interprets to mean the Hearing Officer may re-open a hearing. Concern was expressed over whether any person could demand a hearing be re-opened for any reason whatsoever. Mr. Miller responded that any person could make such a request, but that it is up to the County to decide whether or not there is new testimony or evidence that rises to the level of justifying re-opening the hearing. Mr. Miller also opined that fault should not be found for returning a matter to the Hearing Officer, where citizens can hear and comment about new information.

Mr. Ken Andersen asked the Committee for their thoughts on the application and the 24 conditions as outlined in the Hearing Officer's Findings of Fact dated June 3, 2010. Mr. Andersen read each of the conditions aloud and requested comments or suggestions from the Committee. The conditions recommended by the Hearing Officer were largely accepted, although some discussion was held and some changes were recommended.

Regarding setbacks for excavation and blasting, Ms. Vary noted a change from the previous recommendation of 700 feet to 500 feet. Mr. Larry Anderson noted that the blasting will be limited to once a week. Mr. Ken Andersen added that technological advancements allowed the petitioners to be more precise in their excavation work and blasting. Committee Members had no objection to the language as written.

Regarding the requirement that Vulcan provide the needed seal coat aggregate for maintenance of Barber Greene Road from the quarry entrance/exit to the intersection of Barber Greene and Somonauk Road, the majority of the Committee Members decided to amend the condition with the language from Peter Thomas Smith's June 15, 2010 letter, which requested the following sentence be added, "The need for maintenance and the type of maintenance shall be determined by the authority with jurisdiction over this portion of roadway by reference to IDOT standards".

Regarding the requirement that water discharge from the site shall be clean and that reports of water quality monitoring shall be made available to the County on request, Mr. Haines asked why a third party was not required for the water monitoring as was the case in other standards. Mr. Price, attorney for the petitioner, responded that the Illinois Environmental Protection Agency requires monthly water quality monitoring and reporting. Committee Members had no objection to the language as written.

Extensive discussion was held regarding the hours of operation and shipping. The Hearing Officer recommended that operations shall generally be from 5:00 a.m. to 9:00 p.m., that the quarry shall not operate 24 hours a day on more than 40 days per year and shall not operate on Sundays or holidays on more than 20 days per year, that this requirement shall not apply to shipping, but shall only apply to production, and that 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 Zoning Department.

Ms. Vary suggested the condition be amended to prohibit shipping and production on Sundays and federal holidays since the April 23, 2010 letter from Vulcan Materials agreed to such a restriction. Mr. Haines suggested that the condition be amended to read that the quarry shall not operate *or ship* 24 hours a day on more than 40 days per year, shall not operate on Sundays or *federal* holidays, and that prior written notice to the County of proposed 24-hour operations shall not be required in the case of emergencies.

The Committee briefly discussed the effects of truck traffic and shipping at night.

Mr. Price requested that shipping be allowed 24 hours a day, arguing that night time road projects require material be delivered at any hour.

Ms. Vary asked Steve Slack, neighbor to the Quarry, for comment. Mr. Slack indicated a preference for Mr. Haines' revisions limiting the shipping and operation to between 5:00 a.m. and 9:00 p.m. with the exception of 40 days.

Mr. Larry Anderson observed that traffic noises can be heard by residents through out the County from I88. Ms. Vary agreed. Mr. Ken Andersen stated that he did not want to place undue burden on the quarry operators.

At the conclusion of discussion on this condition, the majority of the Committee Members decided to amend the condition with the language as proposed by Mr. Haines.

Regarding the timing of construction of perimeter berms and landscaping, Mr. Ken Andersen noted that Peter T. Smith's June 15, 2010 letter asked for revisions to this condition. The Committee briefly discussed changing the number of years to construct all the berms from five and 15 years to a uniform 10 year time period. Ms. Tobias observed that a schedule of construction should be created noting that the berms should be built as soon as possible so that on year ten all the berms do not need to be built. Ms. Vary noted that in the past eight years the size and scope of the quarry operation has expanded significantly.

Mr. Smith, attorney for the petitioner, noted that the materials for constructing the berms require that material is created and that the material be of sufficient quality to construct landscaping berms.

Mr. Larry Anderson expressed preference for the farmland to stay intact until excavation, rather than see the property scraped to construct berms. Mr. Anderson also agreed with Ms. Tobias that a phasing plan was necessary.

Mr. Miller noted that plan to keep the perimeter berms 100 feet forward of the edge of the pit is the tool by which construction of the berms can be phased in over time. He emphasized that although the petitioner noted that the County had not previously asked for berms, that does not negate the new request. He noted that the County has accommodated the quarry for 50 years, and that a request for a beautification plan to be completed in five years is overdue. He also asserted that 10 years is problematic from an enforcement standard.

The majority of the Committee Members decided to leave the condition with the language as written by the Hearing Officer.

Regarding monitoring of water levels in wells around the perimeter of the property, Ms. Vary asked that the reports be filed with the County's Planning and Zoning Office. Mr. Haines asked that if a third party would be responsible for the well monitoring.

Mr. Price explained a third party company has already been retained to do the work and started six months ago. He emphasized that well monitoring was in the quarry operators interest so that they can be proactive in response to problems. Ms. Downer identified the monitoring company as GZA Geoenvironmental.

Following a brief discussion, a majority of the Committee Members revised the condition to include a requirement to provide the reports to the County's Planning and Zoning Office upon request and added that the County would be consulted with as to whom the third party company was that would be completing the well monitoring.

Finally, regarding the provision of water in the case where a residential well dries up because of quarry activities, Mr. Miller noted that the "representative" who will provide bottled water should be clarified to be a representative of the quarry. Committee Members had no objection to the language as amended.

Mr. Ken Andersen stated he had a personal relationship with Mr. Smith, attorney for the petitioner, and had previously worked at the Elmer Larson Quarry, and would therefore abstain from the vote.

Ms. Vary moved to recommend approval of the Amendment to the Special Use Permit for a quarry with the conditions as amended, seconded by Mr. Larry Anderson, and the motion carried with six in favor and one abstention.

SOLID WASTE PLAN

Ms. Springmire and Mr. Drake explained to the Committee that the Illinois Environmental Protection Agency requires a five year update to the Solid Waste Plan.

Ms. Tobias asked for the highlights. Ms. Springmire noted the efforts to begin a medication take-back program and the item which seeks a building site to take in “orphan” wastes regularly (these wastes are collected now during annual recycling events).

Mr. Haines noted that many multi-unit landowners within municipalities were required to provide a trash dumpster for anything over four units but that they would have to pay additional for recycling service which is not mandated. He asked what could be done to encourage recycling. Ms. Tobias wondered if incentives could be offered to encourage recycling.

Mr. Drake responded that he is of the opinion that some people will recycle and some just will not. He suggested that only through legislation could the County Board compel recycling. Ms. Tobias noted even with a County legislative requirement the municipalities would be not be obligated to adopt the legislation. Mr. Drake also reported to the Committee that the a Rural Recycling Center would be opening in the northern part of the County within the next two months.

Mr. Haines moved to recommend approval of the five year update to the DeKalb County Solid Waste Plan, seconded by Ms. Vary, and the motion carried unanimously.

DISCUSSION ITEM

Mr. Miller reported to the Committee that with receipt of the Sound Study, that NextEra has completed or is complying with a majority of the Ordinance conditions. He explained to the Committee that the number of complaints is beginning to wane. He offered that in the first six months of operation of the wind farm he had tracked the number and type of complaints and observed that noise was the number one complaint, followed by shadow flicker. Mr. Miller went on to explain to the Committee now that the County has received the Sound Study without substantial evidence to refute the study’s findings, staff will explain to future complainants that the wind farm operators appear to be in compliance with the Ordinance requirements.

Mr. Miller also noted that NextEra had contacted all property owners who receive 20 or more hours of shadow flicker within a year and offered to provide either interior drapes or exterior landscaping to address the issue. Although Mr. Miller observed some property owners may not

accept either remedy as acceptable. Mr. Miller also noted that the remaining option for any dispute will be arbitration.

Mr. Hulseberg asked about the report on the damaged wind turbine. Mr. Miller noted that staff had not received the report but had contacted the operator and made them aware that staff wanted to review the findings to determine if there is a design flaw or defective blade. Staff agree to keep the Committee informed on the matter. Mr. Hulseberg also asked if since GE was the applicant for the blade replacement if there was anything telling about that aspect of the Building Permit. Mr. Miller responded that it was not surprising that GE was involved since NextEra had a warranty on the turbine. Mr. Miller also noted that the GE representative had informed staff this was the first time he had ever needed to seek a Permit to replace a blade.

MONTHLY REPORT

Ms. Vary asked if the Aurora Sportsmen's Club would be returning to the Committee for review of Phase II improvements. Mr. Miller observed that the club is like everyone else at the mercy of the economy.

ADJOURNMENT

The Planning and Zoning Committee is next scheduled to meet July 28, 2010 at 7:00 p.m. in the Conference Room East.

Mr. Larry Anderson moved to adjourn, seconded by Mr. Haines, and the motion carried unanimously.

Respectfully submitted,

**Kenneth Andersen
Planning and Zoning Committee Chairman**

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