

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
September 22, 2010**

The Planning and Zoning Committee of the DeKalb County Board met on September 22, 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, John Hulseberg, Ruth Anne Tobias, Pat Vary, and Stephen Walt. Also in attendance were Greg Millburg, Peter Smith, Richard Spry, Jill Downer, Stephen Reid, Steve Slack, Joseph Gulotta, Paul Borek and staff members John Farrell, Gary Hanson, Paul Miller, and Rebecca Von Drasek.

Ken Andersen, Planning and Zoning Committee Chair, called the meeting to order, and noted that Michael Haines was absent.

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

Ms. Vary noted a grammar correction to the fourth paragraph on page four of the July 28, 2010 minutes.

Mr. Hulseberg moved to approve the minutes of the July 28, 2010 meeting of the Planning and Zoning Committee as amended, seconded by Ms. Vary, and the motion carried unanimously.

DISCUSSION ITEM - Vulcan Special Use Permit Amendment

Mr. Andersen introduced the topic and explained that at the July 28, 2010 meeting the Committee had discussed the Vulcan Special Use Permit application and directed staff to put the issue on the next meeting agenda. He also noted that the Committee asked Vulcan's representatives to join the Committee to further discuss the Permit. He observed that the Vulcan's representatives were present and suggested that they be allowed to explain with they withdrew the application for Amendment to a Special Use Permit.

Mr. Hulseberg interjected and asked Mr. Miller to explain where in the Special Use process was the Vulcan application. Mr. Miller responded that Vulcan withdrew its Special Use Permit application, which means the company continues to operate the quarry under the existing ordinances governing the subject property. Mr. Miller noted that by withdrawing the application the discussion of revising the Special Use Permit essentially ends until such time as the applicant returns with a revised amendment request.

Mr. Walt noted that at the July 28, 2010 meeting the Committee asked the State's Attorney for a review of the Special Use process and procedures, as well as the legal ramifications of the

withdrawal by Vulcan from the Special Use permitting process. He asserted he was not onboard with the staff report as presented.

Mr. Andersen noted that the Committee could discuss the State's Attorney's review following the presentation by Vulcan.

Attorney Peter Smith read a prepared statement to the Committee outlining the rationale by which Vulcan rejected the proposed conditions of approval that came out the Committee's discussion of the application. He highlighted two issues: the timeline by which perimeter landscaped berms would need to be built; and the limitation on hours and total number of days of shipping. Mr. Smith's presentation included two handouts consisting of an article from the Wall Street Journal regarding Vulcan's financial hardships in the recent economic recession, and a copy of case law arguing that a Special Use Permit may not include limited hours of operation.

Mr. Andersen asked that everyone wishing to speak wait to be recognized, and he encouraged any members of the public present to feel free to make comments.

Mr. Hulseberg asked if the hours of operation were restricted at the Sycamore quarry. Mr. Spry, a Vulcan representative, stated that he would need to check and report back. Mr. Hulseberg emphasized that the Planning and Zoning Committee was looking to strike a balance between the impacts to surrounding residential neighbors and the quarry's commercial operations. He reported that his own research revealed that 11 other quarry facilities are located within 42 miles of the DeKalb quarry, and he wondered if any of those other 11 quarries had restricted hours of operation.

Mr. Smith asserted that to be competitive Vulcan Materials needed to be able to ship when the customer wants the material, he added that many road projects required delivery at night.

Mr. Hulseberg asked if Vulcan would need to ship more than 40 nights a year. Mr. Smith responded that it would be impossible for them to predict how many days in a year projects might require night delivery.

Mr. Hulseberg asked how far the aggregate from DeKalb County ships and if this was the only facility where shipping is allowed 24 hours.

Mr. Walt asserted that quarries are commonly closed at 6 p.m..

Mr. Smith noted that Vulcan did not prefer to operate 24 hours a day due to the expense. He argued, however, that if a contract requires the aggregate at a specific time then the company needs flexibility to ship.

Ms. Tobias asked the Vulcan representatives if they would be coming back with a revised Special Use Permit application. Mr. Smith responded that the company was willing to consider a re-application and was attending this meeting to address the Committee questions.

Ms. Vary pointed out that as had been indicated in an April 23, 2010 letter from Vulcan representative Jill Downer that the company would not operate or ship on holidays or Sundays. Ms. Vary read a quote from item#16 of the letter in which the company said, “we are willing to compromise on production hours, and will agree to generally limit production to 16 hours per day, with the ability to operate 24 hours per day no more than 40 days per year. We will agree not to ship or produce on any Sundays or holidays”. Mr. Smith agreed that the company will not ship or operate on Sundays or holidays, however, he indicated that the company wants to be able ship on other days of the year without restriction.

Mr. Hulseberg confirmed that the quarry operators were willing not to operate (create aggregate) after 9 pm Monday through Saturday. Mr. Smith agreed.

Ms. Vary asked why the 40 days per year to operate and ship past the 9 p.m. was not sufficient for the quarry. Mr. Smith indicated that business demands vary making it difficult to predict when the company would need to ship aggregate.

Ms. Vary noted that the conditions allowed for an emergency to give the company flexibility. Mr. Smith indicated that the fulfillment of a contract might not be considered an emergency.

Mr. Spry provided an example of when a contract may require night time deliveries, noting that the road project bids may require certain traffic counts be allowed on a given road. Such a count can only be achieved with night deliveries.

Mr. Hulseberg asked the Vulcan representatives to include in any future application for an Amendment to the Special Use Permit the number of quarries within a 60-mile radius of the DeKalb quarry that are allowed to ship 24 hours a day.

Mr. Ken Andersen recognized Steve Slack from the audience.

Mr. Slack noted that this was the fourth discussion regarding this topic. He asked for clarification of Mr. Smith’s comments about the company’s “bottom line.” Mr. Smith explained that he was referring to the County’s request to construct berms within five years, noting the company’s view that to construct the berms in five years creates an undue burden to convert farm fields into berms. Mr. Smith added that the Vulcan felt that berms’ construction should be related to the quarry operations.

Mr. Borek of the DeKalb County Economic Development Corporation expressed his support for Vulcan Materials and noted that the business operations within DeKalb County were an economic asset. Mr. Slack responded that the quarry has been and will continue to be an economic asset to the County for many years.

Mr. Walt noted that the he had legal questions for the State’s Attorney which he believed were not answered within the Staff Report included with the Committee agenda. He also stated that he did not expect staff to answer the legal questions, he expected the State’s Attorney to answer. Mr. Farrell indicated that he assigned the review of the hearing process to two members of the

State's Attorney staff, as well as an intern, and they had not found any case law or State law which negated the reopening of the public hearing.

Mr. Walt disagreed with item 1.E in the Staff Report dated September 8, 2010 from Paul Miller to the Planning and Zoning Committee. He argued that the Section 9.02.B.4.d, could not imply the authority to the Hearing Officer to re-open a public hearing. Mr. Miller responded that this was his interpretation of the Zoning Ordinance, as the Zoning Administrator. Mr. Miller and Mr. Walt further debated which entities had the authority to reopen a hearing. Mr. Miller reiterated his opinion expressed following the direction of the Committee at its July 28, 2010 to the effect that the policy would be that only the Committee or County Board could re-open a public hearing.

The Committee further discussed the process for re-opening a public hearing.

Mr. Walt made a motion to table the discussion item until January, 2011. After a brief discussion, Mr. Walt withdrew his motion.

Mr. Farrell also stated "yes" in response to a question from Mr. Walt regarding whether or not Vulcan had the authority to take over the Special Use Permit from MSJ Larson.

Ms. Allen opined that without an application for a Special Use Amendment the Committee need not discuss a property that is not the subject of a complaint.

The Committee discussed the next steps regarding the Vulcan issue.

Mr. Miller concluded that the County will need to wait for an new application from Vulcan for further action on the Special Use Permit.

COMPREHENSIVE PLAN

Mr. Miller explained that the DeKalb County Unified Comprehensive Plan was adopted in December of 2003 and since that time, economic, demographic, and political conditions have changed. Mr. Miller noted that staff has prepared a draft of an update to the Comprehensive Plan. The draft includes new demographic data, where available, and a revised set of goals and objectives. The Committee was asked to review the draft and provide staff with feedback. Mr. Miller emphasized that the Committee review the goals and objectives section, as these translate into policies, regulations and projects. Mr. Miller also reminded the Committee of the open houses to be scheduled following the Committee's review. Following the open houses a public hearing will be held for the finalized version and then sent to the County Board for adoption. Mr. Miller pointed out that minor revisions of the Zoning Ordinance would also be suggested, although there were no major changes proposed as has been the case in past updates.

Mr. Hulseberg asked when the 2010 census data would be ready. Ms. Tobias noted that preliminary data would be available March 2011, and added that the complete census data may not be tabulated until well into 2011.

Ms. Vary stated that she had reviewed the entire document and had two major proposed revisions. She observed that mass transit was not discussed or emphasized enough within the draft Plan, and in particular urged the creation of mass transit opportunities to areas outside of the County. The Plan should also encourage the State to support such efforts. Additionally, she suggested that the Plan discuss creating incentives to encourage the establishment of agricultural conservation easements.

Mr. Andersen asked that DSTATS be included in the review of the Comprehensive Plan.

The Committee decided to continue discussion of the Comprehensive Plan update at its October meeting.

PERSONNEL

Mr. Andersen opened discussion to the Committee regarding the performance of the Director and staff.

Ms. Allen noted that she had not received any complaints.

Ms. Vary complimented Mr. Miller and noted that unfortunately there was no funding for bonuses this year.

Mr. Andersen noted that the Director position requires enforcement on some regulations which are difficult for constituents to understand and accept. He praised the Department and noted that he was happy with the its overall performance.

Ms. Tobias asked if there were outstanding issues or problems within the Department that needed to be addressed. Mr. Miller noted that this would segue into the next agenda topic concerning the draft FY '11 budget.

FY 2011 BUDGET

Mr. Miller summarized the draft FY '11 Planning, Zoning and Building Department budget which has been submitted for review. He noted that the five-percent reduction in expenses from the FY '10 total, requested by the Finance Department, was difficult to achieve. It required cutting the total hours for the part-time Building Inspector position, as well as eliminating staff reimbursement for use of personal vehicles for County business, and eliminating any budget for the purchase of books and subscriptions.

Mr. Andersen asked if Mr. Miller had considered hiring the plumbing inspector on an as-needed basis. Mr. Miller responded that the part-time Building Inspector currently provides that service and that although the position is budgeted for 35 hours biweekly, the actual hours worked depends on the number of inspections. His proposed FY '11 budget leaves only 16.9 hours for every two weeks. Mr. Miller stated that he makes this recommendation with the understanding that if building activity picks up in the future, he will have to return to the County Board to argue for expanding the hours for the part-time Building Inspector.

Mr. Andersen noted that some communities allow State licensed plumbers to approve their own work. Mr. Miller noted that this would mean no oversight of plumbing work.

Mr. Andersen asked about eliminating professional memberships. Mr. Miller responded that he had been directed to cut five percent of the Department budget and therefore additional cuts or changes were not deemed necessary once he had accomplished the five percent reduction. He also pointed out that the advantage of professional memberships is the continuing education requirements, which assures the citizens of DeKalb County that they receive services from up-to-date, fully qualified staff.

Mr. Andersen asked if the Committee felt the waiver of fees for other governmental entities was cost effective. Mr. Hanson emphasized that the County also receives this benefit from other jurisdictions.

Ms. Tobias noted that staff had presented a proposed budget that met the goal of a five percent reduction, so consideration of additional cuts is not needed unless there is future direction to cut the budget further.

The Committee also discussed appeals of the proposed budget which were submitted by County Board members.

Mr. Walt noted that he had requested the removal of vehicle replacements within the proposed 2011 budget except for the County Sheriff. Mr. Miller explained that the County has a seven year vehicle replacement policy, noting that each annual budget has a regular contribution which builds up a reserve to purchase the new vehicle at the end of a seven-year cycle. Mr. Miller asked if the intent of the appeal was to stop the purchase of the vehicle and allocate the funds elsewhere, or if the appeal was that there be no contribution for one year, in effect lengthening the replacement to eight years.

Ms. Vary asked Mr. Hanson what justified the \$42,000 identified for a new vehicle for the County Coroner. Mr. Hanson explained that the price included after-market modification to accommodate the specific needs of the coroner. Mr. Hanson also pointed out that some of the cost of vehicles are recouped through the sale of old vehicles.

Mr. Walt suggested that the savings from the vehicle replacement policy may be better spent retaining staff. He also noted that he had written the appeal to create a discussion about these expenses, noting that the County is entering a very difficult economic environment.

Ms. Tobias asserted that the vehicle replacement program was working well, and added that the replacement policy allows the County to replace a vehicle without having to find money each year for vehicle requests.

Mr. Miller agreed that the program prevents departments from regularly needing to justify a purchase.

Ms. Vary observed that the replacement program was intended to replace a vehicle prior to catastrophic damages caused by wear and tear.

Mr. Hanson noted that the State vehicle buying program allows jurisdictions to purchase vehicles which are bid out to the lowest bidder state wide.

Mr. Anderson asked if the appeal should be amended to shift the program to an eight year cycle. Additionally, he asked where the money came from in the budget. Mr. Miller indicated the annual allocation was in "Contribution to Asset Replacement," and that the amount proposed for FY '11 was \$5,400, which was a 10% reduction in the normal amount. Mr. Miller also explained that if this contribution was removed, such that a vehicle due to be replaced must be used for another year, he would need to request an increase in the vehicle maintenance line item. He pointed out that the truck in question has required \$2,000 in repairs so far this year and that its warranty has expired.

Ms. Allen agreed that the vehicle replacement program has worked well and she noted that the demands of the Building Department put more than regular wear and tear on a vehicle.

Ms. Vary moved to deny the appeal of eliminating the purchase of all vehicles, seconded by Ms. Tobias, and the motion carried with Larry Anderson voting no.

The second appeal was to change the funding to the Soil Water Conservation District (SWCD). Mr. Miller explained that the SWCD appropriation comes to the Planning and Zoning Committee because the District produces Natural Resource Inventory reports when there is a proposal for a new special use or a zone change. The SWCD is also involved in enforcing the National Pollution Discharge Elimination System requirements for Site Development Permits, which are issued by the Planning, Zoning and Building Department.

Mr. Hulseberg explained that his appeal on this matter was to increase the proposed budgeted amount for the SWCD, an appropriation that would be paid for by a his proposed reduction in the State's Attorney's draft budget. He asked that consideration of his appeal be postponed to the October meeting of the Planning and Zoning Committee, by which time the Law and Justice Committee would have met to discuss his appeal.

Mr. Joseph Gulotta, representative of the Soil Water Conservation District, thanked the Committee for their past contributions and noted that the SWCD has been working diligently to reduce expenses. Mr. Gulotta stated that the SWCD preference was that the contribution not be lower than the \$19,000 included in the draft County Budget, which represents a five percent reduction from FY '10. He appreciated that the County was not in an enviable position trying to balance the budget, but stated that the SWCD was committed to continue to provided the County with services.

Mr. Anderson asked if applicants pay a fee for the SWCD reports. Mr. Miller explained that the County does not collect a fee for the SWCD reports but that the applicants pay a fee directly to the District. He added that it is rare that government fees actually cover the costs of services.

Mr. Hulseberg moved to postpone discussion of these appeals to the October meeting, seconded by Mr. Larry Anderson, and the motion carried unanimously.

MONTHLY REPORT

Mr. Miller informed the Committee that there had been two zoning actions for Variations approved by the Hearing Officer, one allowing a lot to have a 33 feet frontage instead of the required 200 feet, and another allowing setbacks of less than 20 feet for two farm houses that are being divided from the surrounding farm fields.

ADJOURNMENT

The Planning and Zoning Committee is next scheduled to meet October 27, 2010 at 7:00 p.m. in the Conference Room East.

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

Respectfully submitted,

Kenneth Andersen
Planning and Zoning Committee Chairman

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