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MINUTES

SANGAMON COUNTY BOARD

MARCH 11, 2014

The Sangamon County Board met in Reconvened Adjourned September Session on March 11, 2014 in the County Board Chambers. Chairman Van Meter called the meeting to order at 7:05 p.m. Mr. Sullivan gave the Invocation and Mr. Fulgenzi led the Board in the Pledge of Allegiance. Chairman Van Meter asked for a moment of silence in recognition of Judge Don Cadagin.

ROLL CALL

Chairman Van Meter asked the County Clerk to call the roll. There were 27 Present – 2 Absent. Mrs. Musgrave and Mr. Preckwinkle were excused.

MINUTES

A motion was made by Mr. Montalbano, seconded by Mr. Bunch, for approval of the minutes of February 13, 2014. A voice vote was unanimous.

MOTION CARRIED
MINUTES ADOPTED

CORRESPONDENCE

A motion was made by Mr. Bunch, seconded by Mr. Montalbano, to place correspondence on file with the County Clerk. A voice vote was unanimous. There was no correspondence filed.

RESOLUTION 1

1. Resolution approving the low bids for township aggregate and patch materials.

A motion was made by Mr. Fraase, seconded by Mr. Ratts, to place Resolution 1 on the floor. Chairman Van Meter asked the County Clerk to call the roll. Upon the roll call vote, there were 26 Yeas – 0 Nays.

MOTION CARRIED
RESOLUTION ADOPTED

RESOLUTION 2

2. Resolution approving the purchase of two tandem snow plows from the State of Illinois joint purchase contract.

A motion was made by Mr. Fraase, seconded by Mrs. Ruzic, to place Resolution 2 on the floor. A motion was made by Mr. Goleman that the roll call vote for Resolution 1 stand as the roll call vote for Resolution 2. A voice vote was unanimous.

MOTION CARRIED
RESOLUTION ADOPTED

RESOLUTION 3

3. 2014-007 – Joseph & Linda Smith, 4424 Irwin Bridge Rd., Cantrall – Granting a Use Variance and a Variance. County Board Member – Harry “Tom” Fraase, Jr., District #1.

A motion was made by Mr. Fraase, seconded by Mr. Krell, to place Resolution 3 on the floor. A motion was made by Mr. Stumpf to waive the reading of the professional staff’s report. There were no objections. A voice vote was unanimous for the adoption of Resolution 3.

MOTIONS CARRIED
RESOLUTION ADOPTED

RESOLUTION 4

4. 2014-008 – Jay Timm, 2708 N. Peoria Rd., Springfield – Granting a Rezoning, Use Variance and Variances. County Board Member – John Fulgenzi, District #17.

A motion was made by Mr. Fulgenzi, seconded by Mrs. Hills, to place Resolution 4 on the floor. A motion was made by Mr. Stumpf to waive the reading of the professional staff’s report. There were no objections. A voice vote was unanimous for the adoption of Resolution 4.

MOTIONS CARRIED
RESOLUTION ADOPTED

WAIVER OF TEN-DAY FILING PERIOD

A motion was made by Mr. Montalbano, seconded by Mr. Bunch, to waive the ten-day filing period. A voice vote was unanimous.

MOTION CARRIED
TEN-DAY FILING PERIOD WAIVED

RESOLUTION 5

5. Resolution approving the renewal of the county's vehicle insurance policy with Cincinnati Insurance Company.

A motion was made by Mr. Krell, seconded by Mr. Deppe, to place Resolution 5 on the floor. A motion was made by Mr. Goleman that the roll call vote for Resolution 1 stand as the roll call vote for Resolution 5. A voice vote was unanimous.

MOTIONS CARRIED
RESOLUTION ADOPTED

OLD BUSINESS

- A. Resolution 5 – Tabled 2/13/14
2014-004 – Robert & Beth Kaufmann, 8220 Farmington Cemetery Road & in the 8200 Block of Farmington Cemetery Road, Pleasant Plains – Granting an amendment and variances. County Board Member – Harry “Tom” Fraase, Jr., District #1.

A motion was made by Mr. Stumpf, seconded by Mr. O'Neill, to take Resolution 5 from the table. A voice vote was unanimous.

Chairman Van Meter asked the professional staff to give the procedural history of the case. Cyndi Knowles stated the petitioners are requesting a rezoning from “A” agricultural district to “R-1” single-family residence district and a variance to allow the lot depth to be greater than two and one-half times the lot width for proposed lots 4, 5, 13, 14 and 1001 for proposed portion A (consisting of proposed lots 1-19 and 1001); and a variance to allow the lot depth to be greater than two and one-half times the lot width for proposed portion B. Molly Berns stated the professional staff recommends approval of the requested “R-1” zoning for proposed portion A. The land evaluation and site assessment score of 146 indicates the property is deemed acceptable for non-agricultural development. There have been several single-family residences built in the immediate area, and this appears to be the trend of development. Staff recommends approval of the requested variances for proposed portion B. The standards for variation are met. Allowing the proposed subdivision will likely increase the traffic; however, the parcel is located on the corner of two major county roads and there will be access to the proposed residential lots from both roads. Public water is also available at the site.

Cyndi Knowles stated the Zoning Board of Appeals concurs with the staff report and recommends approval of the requested rezoning and variances.

Matthew Cate, attorney for the petitioners, addressed the board. He stated they have already heard the staff and Zoning Board of Appeals approval and recommendations on this matter. There was an issue last time that the board was very concerned his clients did not attempt to negotiate in good faith with the Guernseys. He assured them they have attempted to negotiate and did exactly what the board wanted them to do. They went to them and said they would put a restrictive covenant on the back half of two lots, which would thus maximize their usage of the ground, and would give them the ability to use the secondary usage of hunting. Keep in mind they proposed that in good faith, put it in writing and attempted to do so. He knows different board members have been contacted and told they have not negotiated at all and haven't done anything. That is absolutely not true. The Kaufmanns have done so and have tried to be good neighbors. They have tried, as much as possible, to compromise. That has been met with "no, don't build in that area", simply "don't build". Not Mr. Gates, but certain other clients have said his clients should move. That is simply not a fair position to take. They have attempted to negotiate on this matter. They are back before the board now saying they were not able to reach a resolution with them. They are requesting the board look at the legal parameters of what is to take place. That is to look at whether every factor is met, and if the zoning is appropriate given what this board has previously established. The area of hunting rights that will be taken out is a very small area. The only way the Guernseys would be able to hunt on this area anyway is through his client's permission and their son's permission. So, it would be a very minimal area added.

Gordon Gates, attorney for the opponent, addressed the board. He stated they did propose, in writing, a settlement resolution they thought made sense. The petitioners rejected it and countered with their own proposal, which was rejected. He does not want there to be any misunderstandings of the attempt. His client doesn't perceive their offer as being terribly meaningful. They offered to simply not build any houses on the west 109 feet. They were not going to build houses there anyway. The property lays out in such a way that you would not build any houses on the back half of it on the slope in the woods. They both made good faith offers, but they did not get anywhere. Unfortunately, they are here without an agreement on the table. He wishes they had one, but they don't. Mr. Kaufmann is going to have to plow ahead, and they are as well. As the board has noted, they have beat the hunting rights issue to death. He wishes they had not started that issue because there are now bad feelings. The permission his client originally had to hunt will most likely be revoked and they will be worse off than when they started. They are going to ignore that for the moment. They have objections to the property they didn't even get to last time because they were wrapped up in the hunting rights issue. They have objections to this generally because they believe it just doesn't make sense to have this area, which is a productive farm ground, pulled out of production and developed with high density residential. There are a lot of specific reasons for their general objection. He found something written by the Director of the United States Department of Agriculture when he passed the Farmland Protection Policy.

It reads "Agriculture, after all, is really one of the very few truly essential industries. Our nation has been blessed with productive soils, favorable climate and hardworking farmers. Agriculture has played an integral role in the development of our culture and our leadership position in the global economy. Even in the so-called post modern information age, people still must eat. As the world's population continues to increase, in the next century, agriculture is largely to grow in strategic importance. The good earth is at the base of this industry. Its wise use will determine the health, safety and welfare of future generations and our own." Based on that, they passed the Farmland Protection Policy. That is the problem they have here. They are being asked to convert productive farm ground into a real estate development. They don't need it, it doesn't work here and they need farm ground. That is the discretion you have.

Mr. Ratts asked the professional staff if there is validity for the opponent in regards to the two houses they couldn't build at. Mrs. Berns stated in proposed lots 4 and 5 there are woods at the back of it and some floodplain. It takes a rear yard setback of 30 feet in the "R-1". This means the house could go back within 30 feet of the property line. Due to the woods and the floodplain, she believes those houses would have to be further than 30 feet away from that rear property line not to have issues with the timber or with the potential floodplain. She has not been out there and walked that portion of it and did not measure it, but believes that statement has validity.

Mr. DelGiorno asked Mr. Gates to address his client's position with regard to the LESA score that has been given to the Kaufmanns in their application. Mr. Gates stated the LESA score is a judgment call, as we all know. The professional staff does their best job to come up with their LESA score based on the evidence they have at that time. As additional evidence is presented, he believes the LESA score changes in this instance. He has done his assessment of the LESA score and ended up with a number at 171. He obviously has to make some advocacy positions to come up with that, but certainly the LESA score exceeds 150. The meaning of 150 to 170 to you people is not terribly significant. It just doesn't statistically matter. It is clear to them that the LESA score does exceed 150. There is some debate that it is 161. He believes the low number is 161. Obviously Mrs. Berns work is done and she has given you the statement. But, she didn't have the benefit of having all the evidence and testimony. Mr. Gates stated he is very confident of his analysis that it is at least 161. The point is it changes your thinking about whether or not this is a done deal. If it is under 150, based on the LESA theory, it is a done deal. If it is more than 150, you have to find mitigating factors and that there are reasons to do this. That is where they say "there are no reasons to do this". In fact, there are reasons to not do it. Mr. DelGiorno asked if they have any recourse if the board grants the petition and they believe the LESA score is inaccurate. Mr. Gates stated that is a loaded question. If an objector wants to make some sort of claim against the county for making a poor decision, the law is very difficult for objectors. They would have to prove the decision was irrational to the point of almost insane. There is a well established body of law that says you folks have discretion. If he were to make a lawsuit it would allege this was an unconstitutional act because it is irrational. Ignoring a LESA score that was significantly higher than what you thought it was, would be one element of that claim.

Mr. Stumpf asked the professional staff to explain the reason for their score of 146. Mrs. Berns explained that the LESA score is completed for pieces of property requesting zoning from agricultural to residential or to commercial or any other zoning district. When a petition is filed, staff goes out to do a site visit and from that prepares a staff analysis. The LESA score is a part of that staff analysis. The LESA is broken up into two different segments. The second segment is based on the soils. It is not refutable in any way, shape or form. They have a GIS overlay provided by the USDA. They overlay that onto the parcels and it gives them the soils type. There is a formula, adopted by this board, and that is used nationwide to calculate the impact of the soils on future waste disposal, water flow and all those kinds of things. What is more subjective is the first part of the LESA score. Staff bases the LESA score based on the evidence presented in the petition and by their best judgment. Sometimes there are subjective things that go into this as well. Just like they are sitting here debating the staff LESA Score and Mr. Gate's proposed LESA score. She is sure if Mr. Cates and his client sat down they would throw in other factors. That is the reason why staff does not change its LESA score from the Zoning Board of Appeals to the County Board. They would then be making decisions as to the evidentiary basis of different subjective factors. It is staff's opinion that it is a legislative function. They based it on the evidence presented to them at the time of the petition. To clarify for Mr. Gates and the board, he is correct that fewer than 150 points shall be deemed acceptable for non-agricultural development. But, the next range is between 150 and 175 points and shall be considered marginal requiring mitigating factors. Even if the board were to say they like Mr. Gate's evidence, it is founded in basis and is true and effective, that score of 171 is still below the 175 threshold. With mitigating factors, it would be deemed acceptable for non-agricultural development. It is a subjective thing. She did not complete a new LESA score because it is a rolling target in this particular case, and they would be continually changing that. Mr. Gates shared their version of the LESA score, and she would disagree with his assessment. He would have that right to disagree with different inputs on the first half of it, as would Mr. Cates and as would staff. That is how it is developed and adopted.

Mr. Stumpf stated as chairman of the committee he has to be impartial to both sides and come up with a fair answer according to the information they are given. He will then talk to caucus about it. As he said last month, the opponents have every right to try to protect their property, especially if they want to try to protect it for hunting purposes. As a hunter, he would love to shut it down right now. It is ironic that they are sitting at a score of 146 when the entire LESA system is there to protect farmland. The reason it was totally devised many years ago was to protect farmland. If they were anywhere up in the 175, 180 or 190 range, he would be screaming this is not a valid use for this property, but as chairman he cannot do that. He asked Mr. Gates what his assessment is of this. Mr. Gates explained the LESA score is just one piece of your discretion. It is not a rule and is not binding. It is just a suggestion to you. He pulled the act and it specifically says it is designed to assist and facilitate the identification and protection of important agricultural ground. It would not be grounds for a lawsuit if this was denied. It is merely a guide for you to look at. He thinks it is important because it is one of the factors that say you should look closer at this. The points they differ on are things that should matter to you. The first question is "how much of the land within a quarter mile is agricultural?" There is a score of five on here that says only 50% or 74% is agricultural land within a half mile. He just does not see that. Google maps make it possible for him to measure and then divide it into quadrants and decide.

He can't fight about plus or minus two, but he thinks the areas they disagree on are what they should be looking at. This is primarily a farm area. A few houses on an acre or two is different than a real estate development. He thinks that comes into play in the LESA score when it talks about what is there within a half mile. He thinks clearly, within a half mile, it is farm ground. Mr. Stumpf stated Mr. Gates is answering exactly what he is talking about. This system is devised for the protection of farmland and he agrees this area is a farming community. The score is telling them that it is suitable for development. If it was more suitable for agricultural then the score would be a whole lot different than what is being proposed right now.

Mr. Cates gave his rebuttal. He stated when he scored it he got to 141. He knows they should have to go with the staff recommendation because that is who this body pays to do this type of work. Neither he nor Gordon are professionals at this. He can get it to 141 and Gordon can argue 171, although he can probably only say 161. He thinks this body should go with the staff they pay to do this type of work. Gordon knows he can't and won't sue on this basis. It simply isn't the basis to do so. The discretion level is so high. He simply wishes this board would vote with what the staff has recommended.

Mr. Gates gave his rebuttal. He stated the issue of lawsuits is troubling to him. Nobody has talked about filing suits against anybody. He has filed a suit against the county before on a zoning issue and it was difficult. The law is exactly how it should be and the board has discretion. There were comments made at the last board meeting that they have to give permission to rezone this because he satisfied all the requirements. He is telling them they do not have to do anything. They have the discretion to either grant it or not. As long as you have exercised your discretion in a rational way, you will not get sued. The whole idea if they don't grant this they may get sued does bother him a great deal. Hopefully they are not subject to bullying of that kind.

Chairman Van Meter clarified that approval of this petition will require 21 votes because there has been an appropriate petition and objection filed. Dwayne Gab, Assistant State's Attorney concurred. Chairman Van Meter asked the County Clerk to call the roll. Mr. Bunch voted yes, and explained his vote. He explained that many years ago they set standards and guidelines for zoning purposes. It took several years to get the committee in line so they could have some type of vice on these people when they are trying to build and do certain things. His heart really isn't in this tonight because he looked at both sides of this situation. He finds it hard that he voted for these standards and requirements they had to go by. He feels if he votes against this gentleman he will be voting against the reason he voted for these to begin with, even though he isn't really happy with some of the decisions the petitioner made. He is going to support this because they made laws and he meets all the requirements. Upon the roll call vote, there were 24 Yeas – 2 Nays. Mr. DelGiorno and Mr. Fraase voted no.

MOTIONS CARRIED
RESOLUTION ADOPTED

NEW BUSINESS

A. Resolutions

There were no new resolutions.

B. Appointments

Appointment of Terry J. Young to the Community Services Block Grant Advisory Board, replacing Carolyn Oxtoby, for a term expiring March, 2017.

A motion was made by Mr. Montalbano, seconded by Mr. Bunch, for approval of the appointments. A voice vote was unanimous.

MOTION CARRIED
APPOINTMENTS ADOPTED

**REPORTS OF COUNTY OFFICIALS, REPORTS OF SPECIAL COMMITTEES,
REPORTS OF STANDING COMMITTEES, COMMITTEE REPORT ON CLAIMS**

A motion was made by Mr. Bunch, seconded by Mr. Montalbano, to place the reports on file with the County Clerk. A voice vote was unanimous.

MOTION CARRIED
REPORTS FILED

RECESS

A motion was made by Mr. Montalbano, seconded by Mr. Bunch, to recess the meeting to April 7, 2014 at 7:00 p.m. A voice vote was unanimous.

MOTION CARRIED
MEETING RECESSED

Joe Aiello
Sangamon County Clerk