

MINUTES OF REGULAR MEETING

Champaign County Environment & Land Use Committee
Champaign County Brookens Administrative Center
Urbana, IL 61802
DATE: September 08, 2008
TIME: 7:00 p.m.
PLACE: Lyle Shields Meeting Room
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802

MEMBERS PRESENT: Chris Doenitz, Brad Jones, Ralph Langenheim, Jon Schroeder (VC), Barbara Wysocki (C)

OTHER COUNTY BOARD MEMBERS PRESENT:

Pius Weibel (County Board Chair)

MEMBERS ABSENT: Jan Anderson, Carrie Melin, Steve Moser, Matthew Gladney

STAFF PRESENT:

John Hall, Leroy Holliday, J.R. Knight, Frank DiNovo (Regional Planning Commission), Susan Chavarria (Regional Planning Commission), Christine Papavasiliou (Assistant State's Attorney), Brent Rose (Regional Planning Commission)

OTHERS PRESENT:

Alan Kurtz, Linda Ohnstad, Rex Bradfield, Craig Rost

1. Call to Order, Roll Call

The meeting was called to order at 7:00 p.m. The roll was called and a quorum declared present.

2. Approval of Agenda

Mr. Langenheim moved, seconded by Mr. Schroeder to approve the agenda. The motion carried by voice vote.

3. Approval of Minutes (August 11, 2008)

Mr. Jones moved, seconded by Mr. Doenitz to approve the August 11, 2008 minutes.

Mr. Hall stated that Ms. Susan Monte has requested that Page 7, Line 28 be amended as follows: Ms. Monte stated that the risk assessment stage of the plan is nearly complete with the process of risk assessment to be

1 completed in September.

2
3 Mr. Hall stated that Line 35 should be amended as follows: Ms. Monte stated that after the risk assessment
4 stage they will be moving in to identify mitigation and implementation measures and during that stage we
5 expect to have a public participation event in either an open forum or an open house.
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7 **Ms. Wysocki requested a voice vote to approve the August 11, 2008 minutes as amended.**

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9 **The motion carried.**

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11 **4. Correspondence**

- 12
- 13 **A. Mahomet Aquifer Consortium Member Meeting No. 60, June 12, 2008, minutes**
- 14 **B. Mahomet Aquifer Consortium Meeting No. 61, August 14, 2008, agenda.**
- 15

16 **Mr. Langenheim moved, seconded by Mr. Doenitz to place the Mahomet Aquifer Consortium**
17 **Member Meeting No. 60, June 12, 2008, minutes and the Mahomet Aquifer Consortium Meeting No.**
18 **61, August 14, 2008, agenda on file. The motion carried by voice vote.**

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20 **5. Public Participation**

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22 Mr. Rex Bradfield, engineer for the Petitioner regarding Subdivision Case 193-08: Broken Arrow
23 Subdivision, stated that he would like to defer his comments until Item #8 on the agenda is addressed by the
24 Committee.
25

26 Ms. Linda Ohnstad, who resides at 1886 CR 1600N, Urbana, stated that she would like the County Board to
27 not require her to pay a \$68 permit fee for maintenance that she completed on her deck. She said that she
28 would like to see a clear definition of the word “change” and how fees are determined and she would like to
29 have the right to appeal such fees without a \$250 fee. She said that she would also like to see the County
30 Board care more about the homeowner trying to do the right thing than the permit fee.
31

32 Ms. Ohnstad stated that the reason that she would like to see these items is because she had her first
33 experience with Champaign County Planning and Zoning Department this summer. She said that she called
34 their office a month in advance and asked about redoing her front deck, because due to deterioration it was
35 no longer safe. She said that she was informed that as long as she did not change the size of the deck and
36 kept the same configuration she would not need a building permit. She removed the four metal poles and
37 replaced them with wood using the same holes. She said that she also kept the same metal support system
38 under the deck and replaced the wood deck with composite wood and all metal with cedar. She said that
39 rather than placing a canvas top on the deck she installed greenhouse plastic.
40

41 Ms. Ohnstad stated that shortly after her deck was completed she received a bill for \$68 for a building
42 permit. She said that on the application, “front porch addition” was written in for proposed construction and
43 the area for existing was left blank. She said that when she went to the Planning and Zoning office she

9/08/08

AS APPROVED OCTOBER 14, 2008

ELUC

1 received an apology for the wrong information that she was given over the phone and they were probably
2 more polite than she was. She was told that since she had completely removed and replaced the metal and
3 wood and added a plastic roof that it was a change. She said that she informed staff that she did not
4 understand why it is considered maintenance and no building permit is required if someone completely
5 removes siding from a house and replaces it with other siding material. She said that her deck is 10' x 6'
6 and the fee for altering structures is \$16 per 100 square foot and the fee for a deck is listed at \$33 dollars
7 therefore she does not understand how the \$68 fee applies to her situation.

8
9 Ms. Ohnstad stated that since she disagreed with the staff decision she was told that she could appeal their
10 decision but of course at a non-refundable \$250 fee, regardless of the outcome. She said that to her this
11 process is the same as not allowing her to appeal.

12
13 Ms. Ohnstad asked if it is the Department's mission to enable the County Board to formulate and prioritize
14 clear and effective policies, plans and programs related to land use and development; to implement the
15 County Board's policies and programs fully, effectively and efficiently; and to provide the highest level of
16 service to the public and maintain the highest professional standards possible within the limits of available
17 resources.

18
19 Ms. Ohnstad stated that she does believe that zoning and building rules are needed to protect us but should
20 we be micro-managing. She said that she may still be out \$68 when she leaves here but she will have the
21 satisfaction of being able to speak. She thanked the Committee for their time.

22
23 Ms. Ohnstad presented two photos of the reconstructed deck for the Committee's review.

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25 **Mr. Doenitz moved to suspend the rules so that the Committee can address this issue, seconded by Mr.**
26 **Jones. The motion carried.**

27
28 Mr. Doenitz requested staff comment.

29
30 Mr. Hall stated that Ms. Ohnstad did a good job of presenting both sides. He said that she removed the roof
31 structure, replaced the deck and then added a new roof structure. He said that in every instance this type of
32 issue is treated as rebuilding the structure. He said that this would be treated the same way, and a permit
33 would be required, if someone tore down an existing house and built a new house with the exact same
34 square footage. He said that the cost of an appeal is \$200 regardless of the outcome of that appeal and
35 admittedly this process may not make sense in this instance but that is literally what the *Ordinance* states.
36 He said that people always state that they have contacted the office and received incorrect information and
37 that may well be but everyone in our office who gives out information is aware that a permit is required for
38 rebuilding. He said that he is at a loss to explain how such bad information was given to a citizen when staff
39 receives calls like this all of the time and that mistake has not been made previously although if the mistake
40 was made it doesn't change what the *Ordinance* requires. He said that it may be possible to amend the
41 *Ordinance* so that someone would not be required to obtain a permit if they desire to rebuild something but
42 frankly it is hard for him to conceptualize how the Board would allow that and still be reliably enforcing the
43 *Ordinance*. He said that he stands by what the *Ordinance* requires and if the Committee desires staff to

1 come back with some proposed amendment then that can done. He said that at this point the only thing that
2 staff is doing in Ms. Ohnstad’s case is enforcing the current *Ordinance*.

3
4 Mr. Doenitz stated that after reviewing Ms. Ohnstad’s photographs of the new construction it appears that
5 only the timbers and the roof were changed not the deck. He said that if an amendment needs to be
6 proposed regarding the need for a permit for maintenance of existing outside accessories that are attached to
7 a home then he would be in favor of such an amendment.

8
9 Mr. Schroeder stated that everyone is aware of the lifespan of a deck in comparison to the lifespan of a
10 home. He asked Mr. Hall if it is his judgment as the Zoning Administrator or is there extensive language in
11 the *Ordinance* regarding this type of reconstruction.

12
13 Mr. Hall stated that there shouldn’t be any judgment in this matter. He read the *Zoning Ordinance*
14 definition of “alteration” as follows: Any change the bearing walls, columns, beams, girders, or supporting
15 members of a STRUCTURE, any change or rearrangement in the floor area of a BUILDING, any
16 enlargement of a STRUCTURE whether by extending horizontally or by increasing in HEIGHT, and/or
17 movement of a STRUCTURE from one location or position to another.

18
19 Mr. Hall stated that there is no doubt that there was a change in the columns which supported the roof of the
20 porch. He said that Section 9.1.2.A.2. indicates that a Zoning Use Permit is required to CONSTRUCT or
21 erect a new STRUCTURE or ACCESSORY STRUCTURE or part thereof. Mr. Hall stated that this
22 situation was clearly erecting a new roof structure and new roof over the porch. He said that again an
23 amendment could be proposed to limit that application.

24
25 Mr. Schroeder stated that he understands what Mr. Hall read from the *Ordinance* but the footprint did not
26 change. He said that buildings that are in nonconforming areas of the County can be rebuilt if they use the
27 same footprint.

28
29 Mr. Hall stated that nonconforming structures cannot be replaced if the replacement is over 50%. He said
30 that if the porch had been nonconforming the only way that staff would have known about it would be if
31 they would require a permit for it but this porch was conforming.

32
33 Mr. Jones stated that the Board should encourage people to maintain their property and in this instance we
34 are talking about a deck. He said that if permit fees are required for this type of maintenance then it may
35 discourage many people from doing such and if the *Ordinance* is written in such a way then we should
36 really look at changing that text. He asked if the maintenance includes the same footprint for a deck but
37 different materials then would a permit be required.

38
39 Mr. Hall stated that a permit fee would not be charged for simply replacing an uncovered deck but if
40 someone tears down an old covered deck or porch and desires to erect a new covered porch or deck then a
41 permit with fees would be required.

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43 Ms. Wysocki asked Ms. Ohnstad if she intends to appeal the fees.

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Ms. Ohnstad stated that she cannot afford to appeal this decision at this time.

Ms. Wysocki asked Ms. Ohnstad if she has paid the \$68 permit fee.

Ms. Ohnstad stated no. She said that Mr. Hall informed her that she could wait until after this meeting. She said that there are four posts holding up a plastic roof and it is not enclosed. She said that there are four wood posts in the same holes that housed four metal posts to hold up the plastic roof.

Mr. Doenitz moved, seconded by Mr. Jones to waive the permit fee as requested by Ms. Ohnstad for the reconstruction of a covered porch.

Mr. Hall stated that in the past staff has brought fee waiver requests to the Committee for action but he stressed that the *Zoning Ordinance* does not provide for such action. He said that the *Ordinance* would suggest that it does not prohibit variances for the fee but it has never provided for this Committee to waive a fee.

Mr. Doenitz asked what the best solution would be to address this issue.

Mr. Hall stated that the best solution would be to amend the *Ordinance*. He said that staff could put Ms. Ohnstad’s permit notice in abeyance while we work through the amendment.

Mr. Doenitz withdrew his motion.

Mr. Doenitz moved, seconded by Mr. Jones to hold Ms. Ohnstad’s permit notice in abeyance and directed the Zoning Administrator to report back on a proposed amendment eliminating the fee for permits to reconstruct porches and covered decks.

Mr. Schroeder stated that staff needs more direction, such as if the footprint is not changed on an attached accessory structure a Zoning Use Permit application must be submitted with no fees attached. He said that if the same footprint is kept and a structure is improved by completing general maintenance then it is not detrimental to communities and personal properties and it might make sense for the Board to visit this issue.

The motion carried by voice vote.

6. Updates

A. *Champaign County Land Resource Management Plan*

Ms. Susan Chavarria, Regional Planning Commission, stated that Stage 2 Policy Framework revisions by the Steering Committee began in June, after four months of staff work compiling community interviews and drafting goals, objectives and policies. The original project timeline called for the final draft policies being presented to the County board for review in August and ELUC for sign-off in September.

1 Ms. Chavarria said that the Steering Committee has so far worked a total of 10 hours through four
2 consecutive meetings revising and wordsmithing the draft policies. The entirety of their efforts has focused
3 on Goal 4 Agriculture, which is just one of 8 draft goals. She said that they anticipate that they will finish
4 with Goal 4 and its objectives and policies at their meeting on Thursday, September 11, 2008.

5
6 Ms. Chavarria said that other goals, objectives, and policies are not anticipated to be so controversial, but
7 there are still some significant discussion points coming up. She said that she would anticipate the need for
8 at least three to five more Steering Committee meetings to cover all the goals, objectives and policies.
9 Unfortunately for this process, harvest is coming and it has been suggested by committee members that the
10 next meeting after Thursday, September 11, 2008, not occur until November. She said that what this
11 signifies is the possibility that the Stage 2 framework could extend through late winter, approximately 5-6
12 months off schedule. She said that she does believe, however, that we will be back on schedule by the end
13 of the process, which is scheduled through November 2009 and much of the upcoming work can overlap the
14 continuing work with the goals, objectives and policies.

15
16 Ms. Chavarria personally invited the Committee to the Thursday, September 11, 2008, meeting so that they
17 could give an ear to the considerable efforts this committee is undertaking in the hopes of delivering an
18 acceptable product to the County Board. She said that the meeting will be held from 7:30-10:00 a.m. in the
19 John Dimit Conference Room at the Regional Planning Commission.

20
21 Mr. Doenitz stated that due to time restrictions he has been unable to attend many of the meetings. He said
22 that he has been reading the minutes from the meetings and he is concerned that some of the items which are
23 being presented may not fly therefore everyone may be wasting their time and money. He asked Ms.
24 Chavarria to indicate where the goals came from that have been presented.

25
26 Ms. Chavarria stated that the 18 member Steering Committee is working hard to make sure that the goals are
27 presented in a manner that will fly and that the plan will be completed on time and under budget. Ms.
28 Chavarria said that the Steering Committee is reviewing the original Land Use Goals and Polices from 1977
29 and the Land Use Regulatory Policies. She said that staff is also looking at other Land Resource
30 Management Plans to get other ideas.

31
32 Mr. Doenitz stated that he was concerned about the way the Land Use Regulatory Plan was headed and it
33 appears to be taking a spiral path down. Mr. Doenitz said that if the Land Resource Management Plan is not
34 right then time or money doesn't matter.

35
36 **B. *Champaign County Hazard Mitigation Plan***

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38 Ms. Susan Chavarria stated that the Champaign County Hazard Mitigation Plan is currently finishing up
39 Stage Two, Risk Assessment, and is about to begin Stage 3: Mitigation Plan, which should extend through
40 March.

41
42 **C. *Proposed Intergovernmental Agreement regarding development pursuant to municipal***
43 ***annexation agreement that is more than one-and-one half miles from the municipality***

and House Bill 2518

D. Senate Bill 2022

Mr. Hall stated that there is no new development regarding Items #6.C or #6.D. He said that prior to tonight’s meeting he checked the General Assembly website and neither House Bill 2518 or Senate Bill 2022 has changed. He said that he will continue to report back to the Committee until the fall veto session.

Mr. Schroeder asked Mr. Hall if there was anything that the individual County Board members could do.

Mr. Hall stated that he does not know who is carrying the ball on the Senate side but we have spoken with Senator Righter in the past and he would hope that Senator Frerichs would be willing to pitch in. He said that Senate Bill 2022 is stuck in the Rules Committee and he is not sure who would be best to try to deal with this situation but on the house side our contact would be Representative Naomi Jakobbson.

7. Proposed Resolution regarding procedure to replace a member of the Champaign County Land Resource Management Plan Steering Committee

Ms. Wysocki stated that at the August meeting the Committee discussed the fact that the Resolution that created the Land Resource Management Plan offered no option for replacing members who need to step down. She said as per the Committee’s direction, staff has prepared a proposed Resolution which was included on Page 22 of the mailing packet and an additional version of the Resolution has been distributed to the Committee for review. She said that this Committee originally created the Resolution for the LRMP therefore it is this Committee’s responsibility to amend the Resolution if needed.

Mr. Schroeder moved, seconded by Mr. Doenitz to recommend approval of the Resolution indicating the following:

In the event that a Steering Committee member replacement is required, County Board members shall be notified regarding such vacancy a minimum of three weeks prior to the Policy, Personnel and Appointments Committee meeting at which a Steering Committee replacement member will be considered. County Board members will be provided a minimum period of two weeks within which to nominate one or more potential Steering Committee members meeting criteria listed in County Board Resolution No. 6052.

Mr. Doenitz stated that he does not believe that three weeks is enough time because you literally only have two weeks to do anything due to the Policy, Personnel and Appointments Committee agenda is sent out one week prior to the meeting. He said that he would suggest that County Board members be notified of the vacancy, at a minimum, of four weeks prior to the Policy, Personnel and Appointments Committee meeting.

Mr. Langenheim stated that he agrees with Mr. Doenitz and finds that the text in the proposed Resolution somewhat confusing.

1 Ms. Wysocki stated that given the schedule of the Policy, Personnel and Appointments Committee the
2 notice of the vacancy would have to be given about a month before the meeting. She said the County Board
3 would need to be aware of any vacancies shortly after the previous Policy, Personnel and Appointments
4 Committee meeting.

5
6 Mr. Hall stated that the distributed Resolution indicates the following last sentence: County Board members
7 will be provided a minimum period of two weeks within which to nominate one or more potential Steering
8 Committee members meeting criteria listed in County Board Resolution No. 6052. He said that if this
9 sentence is stricken it would not be as confusing. He said that he agrees with Mr. Doenitz in that the County
10 Board really needs a month in order to have two weeks to submit a nomination.

11
12 Mr. Doenitz requested that Mr. Schroeder allow him to amend the original motion as follows:

13
14 **Recommend approval of the Resolution Regarding Procedure to Replace a Member of the**
15 **Champaign County Land Resource Management Plan Steering Committee as amended as follows:**

16
17 **In the event that a Steering Committee member replacement is required County Board members shall**
18 **be notified regarding such vacancy a minimum of four weeks prior to the Policy, Personnel and**
19 **Appointments Committee meeting at which a Steering Committee replacement member will be**
20 **considered.**

21
22 Mr. Schroeder accepted Mr. Doenitz’s amended motion but indicated that he would like to add the following
23 sentence: Replacement Steering Committee members shall meet the criteria listed in County Board
24 Resolution No. 6052.

25
26 Mr. Doenitz agreed with Mr. Schroeder’s addition to his motion.

27
28 Mr. Hall read the modified motion as follows:

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30 **Mr. Schroeder moved, seconded by Mr. Doenitz to recommend approval of the Resolution Regarding**
31 **Procedure to Replace a Member of the Champaign County Land Resource Management Steering**
32 **Committee as amended as follows:**

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34 **In the event that a Steering Committee member replacement is required County Board members shall**
35 **be notified regarding such vacancy a minimum of four weeks prior to the Policy, Personnel and**
36 **Appointments Committee meeting at which a Steering Committee replacement member will be**
37 **considered. Replacement Steering Committee members shall meet the criteria listed in County Board**
38 **Resolution No. 6052.**

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40 **The amended motion carried by voice vote.**

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42 **8. Subdivision Case 193-08: Broken Arrow Subdivision. Subdivision Plat approval for a two-**
43 **lot minor subdivision in the AG-1 Zoning District in Section 26, Crittenden Township.**

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Mr. Schroeder moved, seconded by Mr. Langenheim to recommend approval of Subdivision Case 193-08: Broken Arrow Subdivision.

Mr. Weibel asked if a separate access lane will be constructed for Parcel 2.

Mr. Hall stated that there will be a shared driveway.

Mr. Weibel asked if the shared driveway will remain at the boundaries of the two proposed lots or would it be relocated.

Mr. Hall stated that the owners would have the right to establish a new driveway for each lot if they so desired at a later date.

Mr. Doenitz asked Mr. Hall if there were any issues which the Committee has not addressed.

Mr. Hall stated no. He said that what has been presented tonight was simply the requirement that topographic profile be submitted. He said that there are no floodplain concerns and no land is being taken out of production so it is actually using the property more efficiently. He said Mr. Miller and his son are going to both reside on the property when the subdivision is approved by the County Board. He said that the request meets all of the Minimum Subdivision standards and arguably it is an efficient use of the land.

Mr. Schroeder stated that a big plus for this subdivision is that it is along IL Route 130. He said that he has no issues with approval of this request.

The motion carried by voice vote.

9. Enterprise Zone Boundary Amendment

Mr. Schroeder moved, seconded by Mr. Doenitz to recommend approval of the Joint Champaign County-City of Champaign Enterprise zone: Boundary Agreement.

Mr. Doenitz stated that he seconded the motion for discussion purposes only but he does not like to give money away and is concerned that there is no mention of retaining employment or creating new employment.

Mr. Craig Rost, Deputy City of Champaign Manager for Development, stated that the City of Champaign Council and the Champaign County Board must approve any modification to the enterprise zone boundary and then the modification request would be forwarded to the State after those two bodies took action. He said that the City of Champaign Council took action upon this issue on September 2, 2008, and there was some discussion at that meeting along the same lines of what is the appropriate use of the Enterprise Zone regarding infill and employment. He said that the Enterprise Zone is an imperfect land use development tool

1 but it does give some economic advantages. He said that it was discussed that when there is a property such
2 as the subject property which needs a substantial amount of improvement and may be in a location that is
3 hard to sell or occupy the Enterprise Zone is one more tool that the community has to get a business in that
4 location. He said that F.E. Moran, Inc. has indicated that they are interested and would need to invest more
5 than \$1 million dollars in to the property in order to upgrade it. He said that it is not known what the rate of
6 return is on the Enterprise Zone benefits when you have an existing piece of property versus a bare piece of
7 land. He said that one of the concerns is that when an outdated building sits on a piece of land that is
8 somewhat difficult to move because it is not on a heavily traveled arterial the building could sit empty for a
9 long period of time. He said that the City of Champaign’s philosophy is that it is better to get someone in
10 the building and take the few years of abatement and the taxes which would be coming in would be those
11 taxes that were already existing on the property therefore only the improvement level is abated and relevant
12 sales tax. He said that he is not at this meeting to debate the merits of the Enterprise Zone but sometimes it
13 keeps us from being in a competitive advantage and several council members pointed out that in a situation
14 where you have property with an outdated building that is surrounded by the zone it may be one of the most
15 appropriate times to use this tool.

16

17 Mr. Doenitz asked Mr. Rost if this property was located in the TIF District.

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19 Mr. Rost stated no.

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21 Mr. Doenitz asked Mr. Rost what the chances are of F.E. Moran, Inc. following through with this proposal
22 without the Enterprise Zone because if we are talking about one million dollars in improvements would \$50
23 thousand dollars make or break the deal.

24

25 Mr. Rost stated that whoever leases or purchases the building would be required to do significant
26 improvements because the building is outdated. He said that if it isn’t F.E. Moran, Inc. then it will be
27 someone else but there is no obligation on F.E. Moran’s part. He said that it is not as speculative as a bare
28 piece of land would be and it is a judgment call.

29

30 Mr. Doenitz asked if F.E. Moran, Inc. has indicated any type of employment statistics and what guarantee
31 has F.E. Moran given that they will complete those needed improvements.

32

33 Mr. Rost stated that he does not know if any new jobs would be created but it would keep a viable business
34 in the community. He said that the physical improvement in the building would be what we would be going
35 after rather than the job numbers.

36

37 Mr. Jones asked Mr. Rost what type of businesses surrounds this property.

38

39 Mr. Rost stated that this is kind of a “hot spot” area unfortunately because pieces of the area are inside and
40 outside the City of Champaign along Anthony Drive. He said that Pepsi Cola has an office in this area as
41 well as American Dowell Sign. He said that the building along Mattis Street is anticipated to help this
42 frontage road although frontage roads are historically difficult to sell and redevelop.

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9/08/08

AS APPROVED OCTOBER 14, 2008

ELUC

1 Mr. Rost indicated the location of the subject property on the map supplied by the City of Champaign
2 Planning Department, included as Page 42 of the mailing packet. He said that when the City of Champaign
3 Council raised the question regarding criteria for infill staff informed the Council that they will come back
4 and discuss this issue because the Enterprise Zone wasn't a targeted benefit to begin with and targeting it for
5 something such as filling in the empty gaps in the community before we spread out in to the county had a lot
6 of appeal to it. He said that this is a good application of the benefit as opposed to just bare land
7 development.

8
9 Mr. Alan Kurtz, prospective County Board member to replace Carrie Melin, stated that he drove to the
10 property and entered the building. He said that he observed that the building is very dilapidated and he
11 agrees with Mr. Doenitz in what guarantee does the County have that F.E. Moran will complete those
12 needed improvements.

13
14 Mr. Weibel asked if it would be better to bulldoze the building and start out fresh.

15
16 Mr. Kurtz stated that this may be a good point. He said that the building is still being used to some degree
17 but due to the amount of work that needs be completed it may be more useful for someone to tear down the
18 building and start fresh. He said that one million dollars in improvements is what is promised but that
19 doesn't mean that they will follow through on that promise. He said that F.E. Moran may just say that they
20 will use the existing building. He asked if there was a way that the County could require F.E. Moran to
21 follow through on their promise for the \$1 million dollars in improvements.

22
23 Ms. Wysocki asked Mr. Rost if there is a way to hold F.E. Moran to their promise.

24
25 Mr. Rost stated that it is possible but it is somewhat complicated by the fact that both of the political bodies,
26 City of Champaign and Champaign County, have to act on this agreement. He said that potentially F.E.
27 Moran could have a development agreement with the City of Champaign and the language that would be
28 used in that case would be that the City of Champaign would make their best efforts to amend the Enterprise
29 Zone Boundary because the two pieces outside of the City of Champaign's control would be approval from
30 Champaign County Board's action and the State of Illinois' approval. He said that they cannot enter into a
31 contractual agreement that commits to the improvements if the City of Champaign is only one of the three
32 entities that ultimately make the decision. He said that it is certainly a possibility but the City of Champaign
33 has not engaged in such conversations with F.E. Moran but again such a commitment would not be very
34 binding because the City of Champaign cannot bind the County or the State.

35
36 Mr. Schroeder asked if the taxes that would be abated would only be on the improvements.

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38 Mr. Rost stated that Mr. Schroeder is correct. He said one of the benefits of the Enterprise Zone is that the
39 only thing that will be abated is what F.E. Moran spends therefore if they just move in and occupy the
40 building and spent little or none money then they will have what we have today but if they make significant
41 improvements then that will be abated for a period of five years and then the jump in tax increase would
42 occur and a much more valuable property will be on the tax rolls.

1 Mr. Doenitz suggested that this request be deferred until an agreement regarding improvements is instituted.

2

3 Ms. Wysocki asked Mr. Rost if this is possible.

4

5 Mr. Rost stated that he can certainly present this to F.E. Moran. He said that F.E. Moran may have a
6 contract for purchase that has a contingency in it that they receive the Enterprise Zone. He said that they
7 may need to discuss how to bind them as much as we possibly can, given the intergovernmental nature of
8 this situation and then they will have to wait for the process to be complete.

9

10 **Mr. Doenitz moved, seconded by Mr. Langenheim to defer this item to the October ELUC meeting.**

11

12 Mr. Schroeder asked Mr. Doenitz what he wants to see presented at the October, ELUC meeting.

13

14 Mr. Doenitz stated that what he does not want to see this property being placed in the Enterprise Zone with a
15 free ticket for F.E. Moran. He said that the City of Champaign has already given their approval therefore if
16 the County Board takes action to approve then it is sent to the State for approval.

17

18 Mr. Schroeder stated that he is against deferring this request and is in favor of granting the Enterprise Zone
19 because it is tough enough to do business in the State of Illinois anyway.

20

21 Mr. Weibel asked if F.E. Moran could attend the next ELUC meeting or the County Board meeting.

22

23 Mr. Rost stated that he will contact F.E. Moran to see if it would be possible for them to attend. He said that
24 it would be difficult for the City of Champaign and the County to have an agreement between themselves
25 therefore what need to have F.E. Moran commit to development on the subject property.

26

27 Ms. Wysocki stated that currently there are two motions on the floor, one to recommend approval and one to
28 defer this item until the October, ELUC meeting.

29

30 Ms. Wysocki requested a roll call vote for the motion to defer this item.

31

32 **Roll Call for Mr. Doenitz’s motion to defer this item to the October, ELUC meeting:**

33

34	Doenitz-yes	Langenheim-yes	Schroeder-no
35	Wysocki-no	Jones-no	Anderson-absent
36	Moser-absent	Gladney-absent	

37

38 **The motion to defer failed by roll call vote.**

39

40 Ms. Wysocki requested a roll call vote for the original motion to recommend approval for this item.

41

42 **Roll Call for Mr. Schroeder’s motion to recommend approval of the Joint Champaign County-City of**
43 **Champaign Enterprise zone: Boundary Agreement.**

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Doenitz-no	Langenheim-no	Schroeder-yes
Wysocki-yes	Jones-yes	Anderson-absent
Moser-absent	Gladney-absent	

The motion to recommend approval carried by roll call vote.

10. *Champaign County Zoning Ordinance requirements for wind turbine developments*

Mr. Hall distributed to the Committee a memorandum titled, “Zoning Ordinance Requirements for Wind Farms” dated Sept 8, 2008. He said that the memorandum illustrates that if we could proceed with an application for a wind farm under the current *Ordinance* and the way that we charge the fees for a Special Use Permit, which is based on the area taken out of production, a 7,000 acre wind farm with 100 turbines would have an application fee of only \$1,680 which in terms of the amount of what the cost covers would be miniscule. He said that an alternative way, which would require amending the *Zoning Ordinance*, we would charge a Special Use Permit fee based on the entire area described in the application. He said that if the development would be on 7,000 acres with 100 turbines it would be a \$71,000 application fee. He said that this is similar to the fee that McLean County has received for each of the two wind farms and one of those wind farms had an approximate \$90,000 application fee. He said that legally the application fees need to be based on the actual cost that the County incurs and application fees cannot be used as an income generator. He said that wind farms are so controversial and so complicated that the County should not be concerned with a fee of this size. He said that the County is going to have a lot of costs, even if this project goes very well. He said that if the County is involved in a legal challenge, such as McLean County is currently involved in, our costs could have no limit.

Mr. Hall stated that the distributed memorandum is just a reminder to the Committee that when we proceed with an amendment concerning wind turbine developments that the fees are in the neighborhood that the Committee believes is reasonable. He said that there are other ways to calculate fees and if the Committee feels that the upper end fee seems too high then further discussion is needed for alternative fees. He noted that there is no staff recommendation included in the memorandum for the kind of County Board approval that a wind farm should obtain. He said that two approaches were reviewed, the County Board Special Use Permit approach which is what every County that has zoning uses. He said that an alternative is the combination Zoning Map Amendment and County Board Special Use Permit approach and frankly staff has been discussing this issue over the past couple of weeks. He said that we know that there are counties which have taken the County Board Special Use Permit approach for a wind farm but there has been no decision when these projects have been challenged and it is so unlike any other development that staff is a little concerned about this approach. He said that for example, a County Board Special Use Permit for a wind farm would almost certainly result in small parcels that are not party to the agreement of the Special Use Permit being surrounded by the wind farm. He said that there is no other Special Use Permit like this and we know that these things are going to be controversial and the lawsuit that is against McLean County came from owners of these small tracts that are surrounded by the wind farm. He said that the basis of the lawsuit is that McLean County did not treat all testimony in the same manner and they ended up cutting off testimony for some people during the public hearing and he assured the Committee that Champaign County

1 is not going to do that but there is a big possibility that including the smaller land parcels that are not party
2 to the Special Use Permit may create some legal risk. He said that at a staff level we are much more
3 comfortable with a Zoning Map Amendment and a Special Use Permit. He said that this does not have to
4 slow the process down and it doesn't have to increase the fees but it would create protest rights for those
5 people who are opposed to it. He said that if we do not have a Zoning Map Amendment there will be
6 neighbors who are opposed to the proposed wind farm development and they will not have protest rights but
7 the County should not go with the Zoning Map Amendment route just to create protest rights. He said that
8 what is really at issue is a wind farm which will consist of hundreds of wind turbines on thousands and
9 thousands of acres and is that materially different from one or two wind farms here or there. He said that all
10 he can tell the Committee is that a unified wind farm development has road impacts that one or two Special
11 Use Permits would not have and it ends up with a landscape appearance that you wouldn't get if you didn't
12 go with the unified wind farm approach because with the current *Ordinance* there won't be hundreds of
13 wind towers in the AG-1 district. He said that when the *Ordinance* is amended you should consider if it is
14 being amended because we think that this thing will be generally okay anywhere and we just want to review
15 it for site specific concerns or are we amending the *Ordinance* because a wind farm is a unique creature
16 which needs its own overlay zoning district which would require each individual wind turbine to obtain a
17 Special Use Permit.

18
19 Mr. Hall stated that staff is finding this a very difficult call. He said that what really matters is if a tens of
20 thousands of acre wind farm with hundreds of wind turbines is materially different than a few farmers doing
21 a few wind turbines on their farmland.

22
23 Mr. Schroeder asked if a whole new category would need to be created for such an overlay of this type.

24
25 Mr. Hall stated that yes, a new category would need to be created that could be called a Wind Farm
26 Development Overlay which would simply overlay the AG-1 zoning. He said that in Champaign County a
27 landowner has the basic right to sell off three or four lots and he is assuming that this would still be
28 applicable. He said that he is not suggesting that the County change anything about the underlying zoning
29 but there would be an overlay zoning district and for someone to propose that would only need the
30 signatures and support of 50% of the landowners in that area.

31
32 Mr. Schroeder asked if a 2/3 majority would be required from the County Board for approval.

33
34 Mr. Hall stated that approval would require a majority of the County Board but if only 20% of the
35 landowners covered by the rezoning were opposed it would trigger a super-majority requirement. He said
36 that if the Special Use Permit approach is utilized and 20% of the landowners protest the request without
37 protest rights those landowners may take the County to court requesting that there should be a rezoning.

38
39 Mr. Schroeder stated that there is only a small portion of the County which would even be eligible for a
40 wind farm development.

41
42 Mr. Hall stated that there has been rumor of a possible wind farm in the southeastern portion of the County
43 and he is not aware of any specific proposal although we are aware of this specific wind farm proposal to the

9/08/08

AS APPROVED OCTOBER 14, 2008

ELUC

1 landowners in the northeastern portion of the County. He said that right now he would have to say that the
2 County could easily be faced with two wind farms and the proposed wind farm in the northeastern part of
3 the County will involve over 14,000 acres. He said that he does not have any idea what might happen in the
4 southeastern portion of the County but he does know that staff has been receiving calls from an engineer
5 whose job it is to search out likely locations for wind farms and he has indicated that the County may have
6 an application for such a proposal by the end of September. Mr. Hall stated that the engineer did not
7 indicate where this proposed wind farm will be located or how large it would be.

8
9 Mr. Langenheim stated that it is possible that a wind farm could be established and one property owner
10 inside the area could be excluded and would be unable to participate in the profits of installing in the profits
11 of installing his own generators and this would be intolerable. He said that it would also be intolerable for
12 people who are adjacent to the wind farm to be excluded from participating in the benefits thereof or joining
13 in and setting up their own wind farm.

14
15 Mr. Hall stated that individual landowners who desire to erect their own personal wind turbine could do so.
16 He said that what needs to be part of the approval are these commercial scale, 400 foot high commercial
17 wind turbines.

18
19 Mr. Langenheim asked if a small landowner did not participate in the Special Use Permit request for a wind
20 farm could he be prevented from developing on his own land.

21
22 Mr. Hall stated that he is not sure how those things are handled and no specific proposal has been presented
23 for review. He said that this is why we have this concern that leads staff to feel much more comfortable
24 with a Zoning Map Amendment.

25
26 Mr. Doenitz asked what would happen if an application for a proposed wind farm is submitted by the end of
27 September and no action has been taken regarding this matter by the County Board.

28
29 Mr. Hall stated that more than three wind turbines could only happen in the I-2 Heavy Industry zoning
30 district and if a single developer proposes a development with more than three wind turbines then they will
31 need the I-2 Heavy Industry zoning district. He said that he will inform such developers that they will be
32 welcome to apply for the rezoning of 12,000 acres of land in Champaign County to the I-2 zoning district
33 but they should not plan on that request being approved.

34
35 Mr. Doenitz stated that the County is in the driver's seat which will buy the County some time to address
36 this issue in the *Zoning Ordinance*.

37
38 Mr. Hall stated yes and it would give the County an interested observer which could give good testimony
39 during the text amendment process. He said that those landowners who are opposed to such a development
40 would probably accuse the County of tailoring the *Zoning Ordinance* to fit the developer's needs but we
41 want to be realistic when we set up this text amendment.

42
43 Mr. Doenitz stated that this testimony will give effected property owners which are outside of the wind farm

1 the right to protest.

2
3 Mr. Hall stated yes.

4
5 Mr. Langenheim stated that he is thinking that a certain area will be blocked off and everyone in that area
6 would share equally in terms that are proposed.

7
8 Mr. Hall stated that if the County Board Special Use Permit approach is taken and all of the signatures of all
9 of the landowners were obtained in that proposed area as part of the special use permit then personally he
10 would have no reservations about that approach.

11
12 Mr. Langenheim stated that if there is a landowner in that area who wants to hold out and not be part of that
13 development he is restricted from holding out because the unit is established by law and all of the land in
14 that area is treated as a single owner and the proceeds are divided equally amongst the landowners.

15
16 Mr. Schroeder asked Mr. Langenheim if he is indicating that a landowner who chooses not to be included in
17 the special use permit or map amendment should receive some of the proceeds that are received by the
18 landowner who is a part of the wind farm development.

19
20 Mr. Langenheim stated yes.

21
22 Ms. Wysocki stated that she attended the Champaign County Farm Bureau workshop regarding agri-energy
23 which included a speaker who was a landowner in McLean County who was speaking about his experience,
24 as a landowner, in getting that whole process started. She said that each landowner has their own lease with
25 the company or developer which is installing these wind turbines and each landowner receives \$20,000
26 dollars a year for the rent that the developers will pay for those turbines to be erected on their property. She
27 said that if someone owns more land or has more than one wind turbine on their property then of course they
28 receive more than \$20,000 dollars but it is not like there is a pot of money that is divided up each year
29 amongst the involved landowners. She said that in the speaker's experience there were no landowners who
30 held out along that corridor which houses the wind turbines and currently the developer is moving across the
31 road to establish contact with the landowners with the idea of expansion. She said that basically the
32 landowner is receiving rent regardless of the amount of energy that is produced by each individual wind
33 turbine.

34
35 Mr. Schroeder stated that he does not believe that there is any way that the County can legally disperse those
36 rental funds to the affected and unaffected landowners. He said that a more than 1,000 feet tall
37 communications tower was erected within one-quarter of a mile of his parents and at one time the strobe was
38 so bright that it blinked in their south window. He said that the landowner is receiving a certain amount of
39 money per year for that tower although it is affecting everyone in the area.

40
41 Mr. Langenheim stated that there are spacing requirements for the wind turbines so a pattern of windmills is
42 created. He said that if there is a landowner who does not have a site or lease agreement for a wind turbine
43 although his land is completely surrounded he would be restricted to place a wind turbine on his property.

9/08/08

AS APPROVED OCTOBER 14, 2008

ELUC

1 He said that if there is going to be a legally described pattern and everyone who lives within the area goes
2 with that pattern and must assume part of the responsibility of that pattern but must also gain part of the
3 income from it, whether they want to be in the pattern or not.

4
5 Mr. Schroeder stated that he is not sure how the County Board as a whole can achieve that equilibrium.

6
7 Mr. Langenheim stated that he suggests that the County find a way to achieve that equilibrium.

8
9 Mr. Hall stated that if the map amendment approach is taken the people who are included in that case that
10 don't feel like they are receiving their fair share will have protest rights. He said that a County Board
11 Special Use Permit will have landowners that are sitting in the middle of the wind farm that are not going to
12 receive any benefit from the wind farm. He said that the County cannot deal with the distribution of benefits
13 and the most the County can do is create protest rights.

14
15 Mr. Schroeder asked Mr. Hall if there are any counties which have gone with a Zoning Map Amendment for
16 this type of development.

17
18 Mr. Hall stated that he is not aware of any counties which have taken this route.

19
20 Mr. Weibel asked Mr. Hall how many counties in Illinois have wind farms.

21
22 Mr. Hall stated that there are at least a dozen or more counties in Illinois which have wind farm
23 development. He said that he has been more concerned that there is a tendency in zoning to copy what
24 another county has approved and he has always tried not to do that.

25
26 Mr. Weibel stated that if we do not get something in place then it may be like some of the oil lease
27 agreements where it is first come first serve.

28
29 Mr. Schroeder stated that the oil lease agreement is in regard to limited supply where a wind farm is an
30 infinite supply.

31
32 Mr. Langenheim stated that access to the air is finite.

33
34 Mr. Schroeder stated that if there is only going to be one wind tower per 80 acres the location of the wind
35 tower should be considered in regard to an adjacent landowner who may only have a 10 acre parcel.

36
37 Mr. Jones stated that it appears that the adjacent landowners will be highly impacted by the wind towers and
38 those adjacent land owners should have protest rights. He said that he is leaning towards the map
39 amendment alternative so that the adjacent landowners have that protest right.

40
41 Mr. Doenitz asked Mr. Hall how many of the counties which have wind farms have zoning.

42
43 Mr. Hall stated that he believes that the majority of the counties have zoning but he is only aware of

- 1 Woodford, McLean, and Ogle. He said that is not familiar with any wind turbine developments in the
2 southern portion of the state.
3
- 4 Mr. Doenitz stated that a wind farm is being proposed in Vermilion County but they do not have zoning.
5
- 6 Mr. Hall stated that Mr. Doenitz is correct in that Vermilion county does not have zoning. He said that Ford
7 County does not have zoning either and a wind farm is being proposed in that county. He said that staff can
8 continue to research these other wind farm developments and report back to the Committee but the general
9 approach used is the County Board Special Use Permit.
10
- 11 Mr. Schroeder stated that he would not be opposed to leaning towards the map amendment but the County
12 Board Special Use Permit would probably make the County Board more cognizant of landowners that are
13 going to be adjacent and affected. He asked Mr. Hall to investigate which route some of the other counties
14 have taken in regard to such development.
15
- 16 Mr. Hall asked the Committee if they had any thoughts regarding the fee for this development.
17
- 18 Mr. Weibel stated that a development like this will cost the developer millions of dollars therefore the cost
19 of the zoning case will be minimal.
20
- 21 Mr. Hall stated that staff will report back to the Committee at the October meeting and he will also be
22 discussing the effect on staffing.
23
- 24 Ms. Wysocki asked Ms. Papavasiliou if she desired to add any comments.
25
- 26 Ms. Papavasiliou stated that McLean County was not actually sued for not providing protest rights but were
27 sued for limiting public testimony to ten minutes. She said that this is the only case that she is aware of
28 which involves a lawsuit regarding the establishment of a wind farm therefore this is the problem that her
29 office is facing because they do not know what people's rights are when they are surrounded by a wind
30 farm. She said that people generally do not have rights regarding their landscape but her office is looking
31 into this issue. She said that a State's Attorney from their office is very against limiting public participation
32 but the three attorneys which are currently in the State's Attorney's office do not agree with that view and it
33 has been determined that Champaign County State's Attorney Julia Reitz would like to meet with all four of
34 the attorneys.
35
- 36 Mr. Schroeder stated that landowner's testimony is pertinent information that pertains to the case yet we do
37 not want repetition or a variation of the previous testimony. He said that any piece of information that is
38 provided from any source is always important.
39
- 40 Mr. Doenitz asked Ms. Papavasiliou if she was aware of what stage the McLean County lawsuit is in to date.
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- 42 Ms. Papavasiliou stated that at the next meeting she will have more information for the Committee regarding
43 the McLean County lawsuit.

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Ms. Wysocki asked the Committee if there were any additional comments and there were none.

11. Requirement that a current land owner pay the zoning use permit fee for a structure built by a previous owner without a Zoning Use Permit.

Mr. Hall stated that there is no new information on this issue at tonight’s meeting. He said that the Committee discussed this issue at the last meeting and did not determine a decision or requested any new information. He said that since the last meeting this topic has come up again although in this context someone is looking to purchase a property and they contacted the office and staff identified construction which occurred without a permit. He said that in this particular instance the buyer was made fully aware of the violation before they purchased the property, and that is a good thing. He said that what was issue at the last meeting was that when someone purchases a residential property and discovers at a later date that not all of the accessory buildings were properly permitted. He said that the new owner desires to build on to their home and the *Ordinance* stated that no new permit can be issued unless all existing violations are corrected and unauthorized construction is a violation. He said that the new owner is responsible for payment of any outstanding fees for the previous unauthorized construction and if that unauthorized construction requires a variance they will be responsible for the costs associated with that process also. He said that staff desires direction from the Committee regarding this issue and whether a change to the *Ordinance* is necessary.

Mr. Doenitz stated that the *Ordinance* does need to be changed because a new owner should not be held accountable for the actions of the previous owner. He said that he is aware that some other Board members may disagree with his opinion.

Mr. Weibel asked for a legal opinion on this matter.

Mr. Hall stated that he has discussed this issue with Ms. McGrath. He said that the *Ordinance* has a requirement that the Zoning Administrator cannot issue a permit if there are any outstanding violations on a property. He said that he said that buildings that have been constructed without a permit is a violation and it is very common for new property owners to come to the office to obtain a Zoning Use Permit for their desired new construction to only find out that they are required to pay the fees for construction that the previous owner did not obtain a permit for. He said that the issue that the issue that the Committee was addressing at the August meeting was accessory residential structures which would include sheds, garages, etc.

Ms. Papavasiliou stated that if the *Ordinance* indicates that the new owner is liable then they are liable.

Mr. Schroeder stated that it is too bad that this type of information is not apparent during a title search when the property is purchased. He asked if there was a way that zoning compliance could be incorporated in to that process.

Mr. Doenitz stated that he does not believe that the County government should be putting new owners in that position.

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Ms. Papavasiliou stated that the Committee may want to amend the *Ordinance*.

Mr. Hall asked Mr. Doenitz if it was his intention that if someone buys a property and a garage was built without a permit, which needed a variance, to waive the fees.

Mr. Doenitz stated that he is not recommending that the County waive variance fees. He said that if someone purchases a property and his lawyer was not smart enough to ask the zoning office if all construction was authorized then the new owner is not stuck with paying the fees for any unauthorized structures.

Mr. Hall asked Mr. Doenitz what if that same someone built an unauthorized structure ten year ago and they come to the office to obtain a new permit and discovers that they have to pay the fees for the unauthorized construction.

Mr. Doenitz stated that if it is the same owner then he has no problem with them having to pay the fees for the unauthorized construction. He said that if Brad Jones purchased a property from him, which included an unauthorized structure then Brad Jones should not have to pay the fees for the construction it should be him. He said that he does not understand how the County can hold a new property owner responsible for something that they had no part in.

Mr. Hall stated that if the Committee agrees with Mr. Doenitz's comments it would be his recommendation to just waive those fees but he does not recommend that the County spend its resources to attempt to go back on the previous owner of the subject property.

Mr. Doenitz stated that he would like to see the fees waived for a new property owner who discovers that they have an unauthorized accessory building on their property that was built by a previous owner.

Mr. Hall asked the Committee if they would like to review the draft amendment before the public hearing is initiated. He asked the Committee where they would place this issue on their priority list because staff will have their hands full with the wind farm issue.

Mr. Doenitz stated that after the wind farm issue is resolved then he would like staff to begin constructing an amendment regarding unauthorized construction by a previous owner.

Mr. Doenitz moved, seconded by Mr. Jones to amend the Zoning Use Permit fees for unauthorized accessory structures.

Mr. Schroeder stated that he is opposed to Mr. Doenitz's motion because it is just opening up a can of worms. He said that this would undercut the *Ordinance* and if we approve such an amendment then we might as well not have any fees for construction at all. He said that if someone wanted to improve the value of their property and wanted to build a shed without a permit they could and then turn around a sell the property leaving the new owner with no responsibility for the unauthorized shed.

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Mr. Weibel stated that perhaps staff could check with McLean County to see what practice they follow for unauthorized construction.

Mr. Doenitz stated that he does not believe that the average person is that malicious. He said that there will be some that will fall through the cracks but this situation only comes to light when a new owner comes to the office for a permit.

Mr. Schroeder stated that he does not believe that average person is that malicious but there are a lot of people in the unincorporated areas of the County who are not aware that the *Ordinance* exists and the ones that do really don't care.

Mr. Doenitz stated that we shouldn't just penalize the property owner who is trying to do the right thing.

Mr. Langenheim asked Mr. Hall where the responsibility for the unauthorized construction lies.

The motion carried.

12. Monthly Report (June, July and August, 2008)

Mr. Hall informed the Committee that no monthly reports are available for review at this time. He said that the June, July, August and September, 2008 monthly reports will be available at the October, ELUC meeting.

13. Other Business

None

14. Determination of Items to be placed on the County Board Consent Agenda

The consensus of the Committee was that Items #7 and #8 will be placed on the County Board Consent Agenda.

15. Adjournment

Mr. Schroeder moved, seconded by Mr. Jones to adjourn the meeting. The motion carried by voice vote.

The meeting adjourned at 8:57 p.m.

Respectfully submitted,

ELUC

DRAFT SUBJECT TO APPROVAL DRAFT

Secretary to the Environment and Land Use Committee

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