

AS APPROVED FEBRUARY 13, 2006

MINUTES OF SPECIAL STUDY SESSION

**Champaign County Environment
& Land Use Committee
Champaign County Brookens
Administrative Center
Urbana, IL 61802**

**DATE: November 02, 2005
TIME: 7:00 p.m.
PLACE: Meeting Room 1
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802**

MEMBERS PRESENT: Jan Anderson, Patricia Busboom, Chris Doenitz, Tony Fabri, Nancy Greenwalt (VC), Ralph Langenheim (C), Brendan McGinty, Steve Moser, Jon Schroeder

MEMBERS ABSENT: None

OTHER COUNTY BOARD

MEMBERS PRESENT: Barb Wysocki, Claudia Gross, C. Pius Weibel

STAFF PRESENT: John Hall, Lori Busboom, Susan Monte, Frank DiNovo, Deb Busey, Joel Fletcher

OTHERS PRESENT: Bruce Stickers, Eric Thorsland, Christine desGarennnes, Hal Barnhart

1. Call to Order, Roll Call

The meeting was called to order at 7:00 p.m.

2. Public Participation

None

3. Review of Proposed Draft Zoning Ordinance (Public Review Draft 3) as part of the Comprehensive Zoning Review

Ms. Monte gave a Power Point presentation. She said that Public Review Draft 3 includes text amendments only and not map amendments. She said that no response has been received from the Attorney General's office regarding the inquiry sent in January therefore we have chosen to move forward the proposal which includes text amendments only. She distributed a document titled, "Comparison of Zoning Ordinance Proposals," for the Committee's review. She said that

some of the zoning provisions will be applicable in all zoning districts although some will only apply to the rural districts and some will only apply to the CR District. She said that in the Rural Districts the minimum buildable area which is being proposed is 30,000 square feet with a minimum average width of 150 feet. In all other districts the buildable area is proposed at 75% of the minimum lot area and 75% average lot width. She said that these standards would apply to all lots created after the effective date. She said that in all districts a Drainageway Setback of 75 feet is being proposed. She said that the purpose of the Drainageway Setback is to prevent obstruction of surface drainage. She said that a Drainageway Tile Setback of 25 feet is also being proposed to protect function of surface and drain tile systems. She said that these proposed setbacks would allow for maintenance to occur along the drainageways and prevent structures from being constructed right up to the drainageway. She said that lots created prior to the effective date without minimum buildable area outside Drainageway Setback/Drain Tile Setback limits and lots on which buildings/ structures/use lawfully established within limits of Drainageway Setback/Drain Tile Setback prior to effective date would be exempt from these provisions. She said that in all Districts a Public Resource Protection Buffer would apply at 250 feet. She said that there are two restrictions within the 250 foot which would be to prohibit the construction of structures or direct lighting onto those public resource areas. She said that lots created prior to effective date without minimum buildable area outside the Public Resource Area Buffer and lots on which buildings/structures/use lawfully established within the limits of the Public Resource Area Buffer prior to the effective date are exempt. She said that the following is allowable within the Public Resource Protection Buffer: swimming pools, gardens/hobbies; lighted tennis courts; sheds <150 feet; outdoor storage; driveway/parking; security lighting; and decks/patios.

Ms. Greenwalt asked if someone could farm within the 250 foot buffer.

Ms. Monte stated that from all agricultural activities are exempt zoning provisions. She said that drainage district activities are also exempt. She said that the Rural Districts would include provisions which would serve to protect agricultural activities, such as the maximum lot size. She said that on Best Prime Farmland with an LE Score of 85 or more the maximum lot size is 3 acres. She said that 81% of all soils in unincorporated Champaign County are Best Prime Farmland therefore the maximum lot size restriction of 3 acres will go a long way toward the reducing the consumption of Best Prime Farmland. She said that "by-right" development occurs simply with the issuance of a Zoning Use Permit by the Zoning Administrator. She said that there are discretionary review types of development which require Special Use approval from the Zoning Board of Appeals or County Board approval.

Ms. Monte reviewed the Number of Single Family Residences allowed By Right. She said that currently the existing interim zoning ordinance has become more restrictive in that only one single family residence is allowed on a lot less than 5 acres and only 3 to 4 single family residences are allowed on lots larger than 5 acres. She said that there is no limit on the number of lots 35 acres or larger that have a single family residence. She said that the current proposal would only allow one single family residence on lots 40 acres or less unless one single family residence exists. She said that on lots which are larger than 40 acres, one single family residence is allowed per 40

acres in addition to one existing single family residence with a maximum limit of four single family residences. She noted that agricultural activities and farm dwellings which are accessory to the farm operation are exempt from the zoning provisions.

Mr. Pius Weibel asked if the homes could be located anywhere on the 40 acres or is clustering required.

Ms. Monte stated that the County would encourage during the subdivision review process that the lots be clustered with access to minimize the impacts to adjacent agricultural activities.

Mr. Weibel asked if the homes could be placed in separate corners of the acreage.

Mr. Hall stated that this would require a waiver of the minimum Subdivision Standards.

Mr. John Schroeder requested clarification when staff discusses single family residences and the inclusion of existing farmsteads.

Ms. Monte stated that the single family residences which would be allowed excludes existing farmsteads.

Ms. Claudia Gross asked if the provisions would affect areas around the cities and villages.

Ms. Monte stated that division of land around incorporated cities and villages would be subject to the city or village's subdivision regulations but would also be subject to the County's regulations when applying for a Zoning Use Permit.

Mr. DiNovo stated that the main distinction when land division occurs within a municipality's one and one-half mile extra territorial jurisdiction is if access is available for public sanitary sewer the landowner could propose to rezone to a residential classification which would allow more development. He said that normally if the land is contiguous to the municipality the land would be annexed.

Ms. Monte stated that if land is outside the ETJ of a municipality of the number of single family residences will be limited by these provisions unless they annex.

Ms. Monte stated that one provision which would only apply to the CR, Conservation District is the Stream Protection Buffer. She said that buffers have been proven to be one of the most proven effective methods in restoring and preserving natural resources, improving water quality, protecting properties and assuring public welfare. She said that they are located typically adjacent to perennial and intermittent streams, woodlands, floodplains, forests preserves and around sites with archeological and historical significance. She said that the buffers function as a transition zone to these designated, sensitive areas absorbing and withstanding damaging impacts from nearby human activity. She said that consequently buffers play an important role in the resource

management plans of local and regional regions across the country. She said that a Stream Protection Buffer of 150 feet from the centerline of non-intermittent streams, not located within a drainage district and would apply where 50% of the area is covered by a tree canopy, based on Year 2005 digital ortho photos. She said that this provision is directed primarily towards new development and lots created prior to the effective date of this ordinance without a minimum buildable area outside of the Stream Protection Buffer would be exempt and lots on which building structures/uses were lawfully established within the limits of a Stream Protection Buffer prior to the effective date.

Ms. Wysocki asked if everything which is out there now would basically be "grand-fathered." Ms. Monte stated yes, if it is within 150 feet of the centerline of the stream. She said that most of the County is covered by the jurisdiction of a drainage district. She explained that there are a few areas along the Sangamon River, most of the Middle Fork and a significant portion of the Salt Fork which are not within the jurisdiction of a drainage district and these areas would be affected by the Stream Protection Buffer requirement and all other areas would be exempt.

Ms. Greenwalt stated that she has heard rumors that people will be encouraged to cut down their trees.

Mr. Langenheim stated that if the trees existed when the 2005 ortho photos were taken then further tree removal is prohibited.

Ms. Monte stated that allowance for removal of 3 mature trees, diseased trees would be processed through a tree removal permit procedure.

Mr. Fabri asked if any of the Zoning Ordinance regulations apply within a drainage district.

Mr. DiNovo stated that the County cannot regulate the activities of a drainage district but the zoning regulations apply within the territory whether the zoning districts exist or not with the exception of the Stream Protection Buffer. He said that the Stream Protection Buffer is the only provision that by definition only applies if there is no drainage district in the area. He said that the areas which the County are greatly concerned about are areas not within an established drainage district. He said that for the most part the waterways which are within drainage districts are ditches which are maintained for agricultural drainage and it is not the intent to apply these rules to the agricultural drainage systems only intended to apply to the natural streams that happen to not be in drainage districts.

Mr. Weibel asked if the allowance of cutting three mature trees is per acre or overall.

Ms. Monte stated that the limits of a lot would be considered. She said that a simple permit procedure has been proposed so that the landowner can request up to 10% tree removal without obtaining a variance. She said that there are some restrictions which are being proposed for the replacement of surface vegetation within the 150 foot buffer such as not introducing exotic species

which are listed by the Illinois Department of Agriculture or the Illinois Department of Resources as an invasive species.

Mr. DiNovo stated that no one imagines that the County is going to consult with every landowner before they take a saw into the woods. He said that this is no different than any other zoning provisions because there are a lot of buildings which people begin building in the County without permits and the only way that we can enforce our regulations is to go out and sanction these people and hope that the neighbors learn from their example and do not make the same mistake.

Ms. Monte stated that the Rural Planned Development provisions are similar to those proposed during 2004 with one major difference. She said that the density limit has been doubled or halved. She said that it was previously one lot per 5 acres and now it is one lot per 10 acres. She said that Rural Planned Development would not be allowed on Best Prime Farmland. She said that some of the municipal comprehensive plans allow for rural residential development in their ETJ as a future land use designation and this would be counter to that more liberal comprehensive plan. She said that this is more restrictive and the Zoning Ordinance would not consider a Rural Planned Development on Best Prime Farmland.

Mr. DiNovo added that these are areas without sanitary sewer. He said that there are a couple of municipalities which contemplate residential development without sanitary sewer in their comprehensive plans and this ordinance would not allow it.

Ms. Monte stated that a minimum area of 20 acres is required for a Rural Planned Development with a maximum intensity of development of 1 lot per 10 acres with transfer of potential dwelling units from another lot and that could be increased all the way up to one lot per 2-1/2 acres. She said that this is only provided that the transfer goes through the County Board approval process and is approved.

Ms. Greenwalt questioned if 1 lot per 10 acres is appropriate.

Ms. Monte stated that there will be incentives to encourage smaller lot sizes and to keep homes off of Best Prime Farmland. She said that in the CR district there would be less concern if it wasn't Best Prime Farmland to have a small lot size in those type of instances.

Mr. DiNovo stated that as the Ordinance stands now there is no maximum lot size on land that is not Best Prime Farmland. He said that the criteria for evaluating the proposal is to give weight to efficiency and use of the land.

Ms. Monte explained the transfer of potential dwelling numbers.

Mr. Moser asked how far south is the Sangamon River drainage districts.

Ms. Monte stated that 83% of the Sangamon River is outside of drainage districts and is subject to

the Stream Protection Buffer. She said that 85-90% of the Middle Fork is outside of drainage districts and 50-60% of the Salt Fork is outside of drainage districts.

Mr. Moser stated that 9 miles of the Salt Fork River is not in a drainage district.

Ms. Monte stated that these text amendments will be considered at the November 14, 2005, ELUC meeting. She said that the Committee has received some information from Joel Fletcher, Senior Assistant State's Attorney indicating his concerns about the Stream Protection Buffer provisions. She said that since distribution of this memo staff has worked with Mr. Fletcher and addressed most of his concerns. She said that Mr. Fletcher pointed out that agriculture is exempt and so are drainage districts.

Mr. Langenheim asked the Committee if Ms. Monte's presentation satisfies any reservations that the Committee had about the Draft Ordinance.

Mr. Moser stated that most of the drainage ditches which flow into the Salt Fork, Sangamon or any of the other rivers end 300 feet from the main drainage outlet. He said that this was done to prevent paying maintenance on the main ditches and asked if that 300 feet will be considered in this buffer area or will it be exempt.

Ms. Monte stated that if the 300 feet meets the outlined criteria then it will be included. She said that if it has a minimum of 50% tree canopy coverage, non-intermittent stream then it will be considered.

Mr. Moser stated that he cannot buy into this. He said that most of the drainage districts do maintenance work to the big ditch and if this gets obstructed then he cannot support this provision.

Mr. DiNovo stated that any activity conducted by a drainage district, County or township would be exempt, even if it is not within the district. He said that the intent is not to regulate ditch maintenance but to regulate development on the adjacent land.

Mr. Moser asked if an inactive drainage district is exempt.

Mr. DiNovo stated that there is a geographic description of the kinds of areas that are included and those are only areas which are not in drainage districts. He said that there is the exemption which goes to the activities of drainage districts. He said that if a district is inactive but still exists it still forms the boundary of the area which the County is concerned about.

Ms. Monte stated there are some important exemptions such as stabilization and repair of a drainageway to preserve its function or prevent erosion which is allowed no matter who does it and construction or restoration of natural functions of any kind restoration of wetlands is allowed within a Stream Protection Buffer district.

Mr. Langenheim asked Mr. Fletcher what is the legal status of an inactive drainage district.

Mr. Fletcher stated that he is not prepared to answer Mr. Langenheim's question regarding inactive drainage districts at this time.

Mr. Moser explained the procedure for activating an inactive drainage district. He said that an inactive drainage district is a legal entity which exists without a commissioner and no one pays taxes towards it.

Mr. Langenheim asked how far downstream from the outlet of a tile system would the drainage district intervene to clear the stream. He asked if it could go all the way to the county line.

Mr. Moser stated that he was unsure how far downstream the drainage district could intervene to clear the stream.

Mr. Langenheim reviewed Items #1-9, of the October 26, 2005, memorandum with the Committee. Mr. DiNovo referred to Item #4, and stated that earlier language exempted upland sites from the Stream Protection Buffer although that has been eliminated. He said that the Stream Protection Buffer now applies in upland areas on top of bluffs.

Mr. Fletcher stated that he has a concern with this proposal. He said that this proposal includes a verbal description of areas to be affected by this Stream Protection Buffer therefore there may be legal ambiguity as to whether this is an actual text amendment or should be regarded as a map amendment.

Ms. Busboom asked if landowners which own land in the buffer zone will be compensated.

Mr. Fletcher stated that one of the questions which have arisen due to this proposal is whether or not it could be considered a "taking." He said that the argument that this is a "taking" would be very difficult to make.

Mr. McGinty referred to Item #6, and asked the procedure for removal of a mature tree when it poses a safety hazard.

Mr. DiNovo stated that the County does not want anyone to have to wait to obtain a permit to remove a mature tree if it is an imminent hazard to property to obtain a permit. He said that this could be abused and if the County could prove that the claim was false then enforcement action could begin but again it would be very hard to prove.

Mr. Weibel asked if nuisance trees could be removed or if someone had to wait until they were 6 inches in diameter.

Mr. Fletcher stated someone does not have to wait until they are 6 inches in diameter before they could remove those nuisance trees and then hope that the County agrees with their decision.

Mr. DiNovo stated that the County cannot control every action that a person takes therefore a judgement has to be made whether providing the sense of approval in dealing with a safety hazard is worth it. He said that the Committee may decide to take this provision out of the proposal.

Mr. McGinty stated that he could see leaving the provision in but the concept of asking for forgiveness rather than permission is a question of delicate balance. He said that this could prevent the sacrifice of important resources and may better guide the public in their determination of whether or not a tree is actually a safety hazard.

Mr. DiNovo stated that this would be a tool which would be effective for continuous violators and not used on people who cut down a single tree. He said that once people realize that there is a rule then perhaps they will exercise some caution and discretion and perhaps even good judgement.

Ms. Busboom asked what the fee would be for a tree removal permit and how many trees would this permit include.

Ms. Monte stated that the lowest possible rate has been selected which is \$33.00. She said that if a Zoning Use Permit is being applied for concurrently then there would be no charge for the tree removal permit.

Mr. DiNovo stated that there would be one permit for as many trees that are allowed to be removed but the limit is 10% of the coverage. He said that the first trees can be removed without applying for a permit.

Ms. Gross asked if the tree removal permit will be required in all districts or just in the Stream Protection Buffer district.

Ms. Monte stated that the tree removal permit will only be required in the CR, Conservation District and only in those areas outside of the drainage districts which has more than 50% of that 150 foot strip already wooded.

Ms. Gross asked how long it will take to obtain a tree removal permit.

Ms. Monte stated that usually during the busy season of permit issuance it would normally take 10 days.

Mr. Moser stated that there should be a blanket exemption for anyone who wants to cut down a mulberry tree.

Ms. Monte stated that mulberry trees are listed as invasive species or predatory and those would be approved for removal.

Mr. Fletcher recommended that there is an acceptance of allowing construction if there is no buildable area outside of the Stream Protection Buffer and would recommend that the acceptance be extended to allow removal of trees and disturbance of vegetation in to the area where construction is allowed.

The consensus of the Committee was to extend the language as suggested by Mr. Fletcher.

Mr. Fletcher stated that he does have some concerns regarding the proposal and is awaiting an opinion from the Attorney General's Office.

Mr. Weibel asked if any answers have been received from the Attorney General's Office.

Mr. Fletcher stated no. He said that in January, 2005, he sent 10 questions to the Attorney General's Office and is still awaiting an answer.

Mr. DiNovo stated that these were very difficult questions and will be very hard for the Attorney General's Office to give a simple answer therefore it is very reasonable to expect the amount of time for a response.

Ms. Wysocki asked if the Zoning Ordinance could move ahead and then modify those items when the Attorney General's office opinion is received.

Mr. Fletcher stated that the biggest concern that he would have relates to the entire proposal and whether it should be considered a text amendment or a map amendment and if the Attorney General's Office issues an opinion which suggests that this should be a map amendment and not a text amendment then the entire process will have to start over.

Mr. DiNovo stated that this is a risk that applies to the Stream Protection Buffer and the Resource Protection Buffer. He said that these are the provisions which are most likely to be viewed as map amendments rather than text amendments.

Mr. Weibel asked Mr. Fletcher to define the terms, "Map Amendment" and "Text Amendment."

Mr. Fletcher stated that this is the problem and which term does this provision apply to.

Mr. DiNovo stated that the Committee could move forward with these provisions and treat them as though they were map amendments and eliminate any issues. He said that the issue is procedural. He said that to his knowledge there has been county zoning since the 1930's, and there have been comparable provisions made to ordinances.

Mr. McGinty asked what the County's basic legal risk tolerance is if this is moved forward and an opinion should be received from the Attorney General's Office.

Mr. Fletcher stated that he has several procedural questions for the Attorney General. He said that as to whether this should be considered a map amendment or a text amendment is a significant legal risk and there is also a risk in going forward without having the Attorney General's opinion. He said that he personally would not recommend moving forward with those given risks although it is not his decision to make.

Mr. Moser asked Mr. Fletcher if it would be safe to do the farmland sections of the proposal and leave the rest of it until the Attorney General's opinion is received.

Mr. Langenheim stated that at the current rate for receipt of opinions from the Attorney General the Board could wait a very long time.

Mr. DiNovo stated that we could go forward with the entire package and if parts of it were deemed improper then they would not be effective.

Mr. Fletcher noted that the Committee can pass a zoning amendment conditioned upon receipt of a favorable opinion from the Attorney General's office, but the County Board cannot pass a zoning amendment with this condition.

4. Other Business

None

5. Adjournment

The meeting adjourned at 8:32 p.m.

Respectfully submitted,

Secretary to the Environment and Land Use Committee