

CASES 828-S-16 and 834-V-16

SUPPLEMENTAL MEMORANDUM #4

August 25, 2016

Petitioner: Jonathan Hasselbring, Planning Director for the Champaign County Forest Preserve District

Request: Authorize as a Special Use as a “public park or recreational facility” those portions of the Kickapoo Rail Trail that are proposed in the unincorporated area only, and that shall connect to those portions of the Kickapoo Rail Trail that are proposed to be located inside the Village of St. Joseph and the City of Urbana, in the AG-1 and AG-2 Agriculture Zoning Districts and subject to the variance summarized below but fully described in the legal advertisement, on property that is commonly known as the inactive CSX railroad line located on the south side of U.S. Route 150 and that is described more fully in the legal advertisement but is summarized here as follows:

Part A Subject Property: A 13.2 acre tract in the AG-1 District in Sections 10 and 15 of St. Joseph Township and subject to a variance from parking requirements.

Part B Subject Property: An 11.6 acre tract in the AG-1 District in Sections 9 and 16 of St. Joseph Township and subject to a variance for setback of 65 feet in lieu of the minimum required 85 feet; a rear yard of 23 feet in lieu of the minimum required 25 feet, and from parking requirements.

Part C Subject Property: A 9.2 acre tract in the AG-1 District in Sections 8 and 17 of St. Joseph Township and subject to a variance for setback of 59 feet in lieu of the minimum required 85 feet; a front yard of 23 feet in lieu of the minimum required 25 feet, and from parking requirements.

Part D Subject Property: A 12.4 acre tract in the AG-1 District in Sections 7 and 18 of St. Joseph Township and subject to a variance for setback of 61 feet in lieu of the minimum required 85 feet; and from parking requirements.

Part E Subject Property: A 12.1 acre tract in the AG-2 District in Sections 12 and 13 of Urbana Township and subject to a variance for setback of 65 feet in lieu of the minimum required 85 feet; and from parking requirements.

Part F Subject Property: A 12.1 acre tract in the AG-2 District in Sections 11 and 14 of Urbana Township and subject to a variances for setback of 56 feet in lieu of the minimum required 85 feet; a front yard of 26 feet in lieu of the minimum required 35 feet, and from parking requirements.

Part G Subject Property: A 2.1 acre tract in the R-2 Residential District in Sections 10 and 15 of Urbana Township and subject to a variances for setback of 69 feet in lieu of the minimum required 85 feet; a front yard of 0 feet in lieu of the minimum required 35 feet, and from parking requirements.

Location: Generally, 9 different tracts of land totaling 72.7 acres comprised of the various Parts described above and commonly known as the inactive CSX railroad line between the City of Urbana and the Village of St. Joseph and that shall connect to those portions of the Kickapoo Rail Trail that are proposed to be located inside the Village of St. Joseph and the City of Urbana, Illinois and more specifically described in the attached legal advertisement.

Site Area: 72.7 acres

Time Schedule for Development: As soon as possible

Prepared by: Susan Chavarria
Senior Planner

John Hall
Zoning Administrator

STATUS

This morning, staff received an email from Matt Deering, Attorney for the Champaign County Forest Preserve District, regarding the question of ownership of the subject properties and whether CCFPD has the right to develop the trail on these properties. Please see the attached email dated August 25, 2016, for more information.

Susan Chavarria

From: Matt C. Deering <mdeering@MeyerCapel.com>
Sent: Thursday, August 25, 2016 9:24 AM
To: Susan Chavarria
Cc: Dan Olson; 'Jonathan Hasselbring'
Subject: RE: Zoning meeting

Susan:

On behalf of the Champaign County Forest Preserve District, I submit the following to address concerns apparently expressed regarding the effect of the Supreme Court of the United States' ("SCOTUS") ruling in Brandt v. United States. In the *Brandt* case, SCOTUS ruled that land swapped with or transferred to private owners under the *General Railroad Right-of-way Act of 1875* became the private owners' land in full again when a railroad that ran service across the property abandons the service. The 8 to 1 ruling thus provides that where an owner obtained a right to land under the *1875 Act*, the owner may sue the federal government for compensation for that part of the land that formerly lay under railroad tracks and has been converted to public use.

The case challenged the right of the U.S. to convert a right-of-way granted under the *1875 Act* into a rail trail without compensating the land owner. At issue was whether the federal government retains a reversionary interest in railroad right-of-way after the railroad service thereon is abandoned. The Court found that when the railroad abandons the right-of-way granted under the *General Railroad Right-of-Way Act of 1875*, it essentially terminates the easement and the full rights to the right-of-way revert to the private party.

Importantly, the *Brandt* ruling does not affect the ownership of land that has been "railbanked" pursuant to the later enacted National Trails System Improvements Act (the "NTSIA"). Essentially, this is because pursuant to the NTSIA, railbanked corridors are considered to not have been abandoned. Therefore, the ruling does not affect the Kickapoo Rail Trail as the entire parcel was in fact railbanked pursuant to the NTSIA, and thus was not legally abandoned by the railroad.

I hope this relatively simple explanation adequately addresses the concerns expressed. However, certainly let me know if there are further questions.

Thank you.
MCD

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CHAMPAIGN CO. P & Z DEPARTMENT