

Members Present

Mr. Nixon, Mr. Vickery, Ms. McBride, Mr. Washington, Mr. Olthoff, Ms. Bernard, Dr. Pagast, Mr. Tripp, Mr. Hess, Mr. Stauffenberg, Mr. James, and Ms. Polk

Members Absent

Mr. Flett and Mr. Tholen

In Attendance

- **Board Members**

Mr. Bossert and Mr. Arseneau

- **Department Heads**

- **Media**

Dimitrios Kalantzis

1. Call to Order/Roll Call

The meeting was called to order by the Chairman, Mr. Olthoff, at 9:00 a.m. Quorum present.

2. Public Comment

- **Darrel Bruck commented on the Hieland Road Dump Site.**

3. Approval of Minutes –July 25, 2012

A motion to approve the minutes was made by Mr. Washington and seconded by Mr. Hess. Motion carried with a voice vote.

4. Zoning

- ZBA Case #12-08; Special Use Permit to Section 121-208.b.1 (Flea Market) in the I1-Light Industrial District and Variances to Sections 121-206.a (screening from residential property), 121-294.b.7.b (surface), 121-294.b.7.c (residential property), and 121-294.b.10 (required parking spaces), on a parcel generally situated in Section 21 of Manteno Township. The petitioner is John Tamblyn, property owner and applicant.

Mr. Skimerhorn stated that the applicant wants to go a different direction on this project and is requesting that the committee refer it back to the Zoning Board of Appeals for consideration.

Mr. Hess made a motion to refer it back to ZBA and Mr. Stauffenberg seconded it. Motion carried with a voice vote.

Ms. Bernard asked what they were looking at to change.

Mr. Skimerhorn stated that he believes that they no longer want to do a flea market but instead would like to do an indoor antique mall.

- ZBA Case #12-09; Special Use Permit to Section 121-182.a & 121-183.a (to allow permitted uses listed in C1-Restricted commercial District and C2-General Commercial District) in the I1-Light Industrial District on a parcel generally situated in Section 05 of Limestone Township. The petitioner is State Bank of Herscher Tr#1173 (Limestone Business Park), property owner and applicant.

Mr. Skimerhorn stated that this is the Limestone Business Park located on Rt. 17 just west of the railroad tracks. Prior to 2008 the property was zoned C2 Commercial which allowed commercial uses. In 2008 the

owner had a tenant that wanted to open an auto body shop which is a special use permit in the light industrial district so they requested I1 zoning and received that. Unfortunately, when that happened that made all of the permitted uses in the C1 and C2 district to be special uses in the I1 district. Since then they have come in on numerous occasions to locate businesses there that are retail and commercial in nature and each time it would require a special use permit. The staff felt it was better if they issued a special use permit that allowed all of the permitted uses in the C1 and C2 district to avoid them having to come in every time that they get a new tenant. Zoning Board of Appeals voted 5 to 0 to approve and there were no objectors present.

Mr. Tripp made a motion to approve and Mr. Nixon seconded it. Motion carried with a voice vote.

Mr. Bossert asked if this was an issue that the village had an opportunity to comment on, as well.

Mr. Skimerhorn stated that they did and they have received no comments.

- Land Development Regulations – Development Permits – Elevation Changes

Mr. Van Mill gave an update on the Hieland Road issue. He stated that last week, after it was determined by IDOT that they were going to go with a different proposal for grading the interchange, his office submitted a letter of denial for the current application. After that, on August 23, he provided the committee with a copy of a letter that they also submitted to the property owner stating that given the future use of the property, which was indicated to be for residential purposes, their position with future application of this property for fill would be that they would be required to get zoning approval prior to the issuance of any storm water permit. In essence, what they are saying is that the storm water application and permit are subordinate to any other zoning approvals and for a single family residence on six acres on zoned residential property they would have to obtain a special use permit which would require a public hearing or if they wanted additional lots they would have to go through the subdivision process which would require the improvement plans to be approved by the county board prior to any development. The storm water ordinance is a subordinate permit to any other future development. That is going to be the policy of his office in the future. He knows that there are a lot of questions about the development process and questions about the ordinance itself so he invited Dave Tyson from Tyson Engineering and Mike Gingerich from Gingerich Engineering to come talk to the committee about the ordinance. Both volunteered their time to help them put together their storm water ordinance. His office regularly deals with filling issues and the storm water ordinance that they have in place deals with that. Their flood plain regulations handle these types of things so it is not uncommon in most cases that they deal with this on a regular basis on an administrative level.

Mr. Gingerich stated that the storm water ordinance covers a wide range of issues related to development but there are a couple of sections and divisions that particularly deal with what they have been talking about. Division 2 of the code deals with why the county would require a permit. In the case of this project, it required a permit because they were proposing to disturb over an acre. There is a Subdivision 2 in the ordinance and that deals with construction activities and controls during construction. It is mostly erosion control measures. There is also a Division 3 which is identified as post construction controls which is mostly what the committee was dealing with - what the slopes of the land have to be, how much storm water detention has to be provided on the site and how those storm water detention facilities have to be designed.

Mr. Van Mill asked if it is a regulatory type of ordinance or is it more of an ordinance that puts parameters to what can be done. How would he differentiate this between other land use regulations that they have?

Mr. Gingerich stated that the county has their zoning code and their subdivision code which is more of a land use type of instrument and it gives control of how people use the property and usually requires some kind of hearing in order to get the permit. The storm water ordinance is more technical like the building code. It just relates to storm water and usually doesn't require any kind of public input.

Mr. Bossert asked how long ago the storm water ordinance was adopted.

Mr. Gingerich stated that he does not know for sure - seven or eight years ago.

Mr. Bossert stated that prior to this there was no technical ordinance concerning storm water, is that correct?

Mr. Gingerich stated that the county had an ordinance but it wasn't as robust as this one.

Mr. Bossert stated that as he is looking at our ordinance versus municipalities in the area, does he see any municipalities putting restrictions on amount of fill or hydra fill.

Mr. Gingerich stated that he hasn't seen it in their storm water ordinances. Usually, the ordinance will cover the slope of the grade so if it is a small site they can only get it so high because they can't make the hill steep because it has to be maintainable. The subdivision ordinances usually have something in there about a grading and drainage plan for the subdivision and usually that restricts how high the developer can develop on a property.

Mr. Tyson stated that every individual site is a site of its own so that is why you really can't put a height restriction in a storm water ordinance. Every site has to be looked at individually. You really can't put a certain number to the height for this type of ordinance. This is just to control storm water management.

Ms. Bernard asked if the ordinance addresses the source of the fill so we are not obtaining soil that might come from sources that are contaminated.

Mr. Gingerich stated that it is not normal practice to require testing of soil. It is very common to have soil hauled from one site to another.

Ms. Bernard asked if there is a chain of custody showing where the soil comes from.

Mr. Gingerich stated that he thinks that would probably be a different ordinance. The storm water ordinance doesn't necessarily regulate materials that are going back and forth from sites because they are getting it to manage their storm water. If they are going some activity that doesn't have anything to do with changing the land this ordinance would not cover it. If you wanted to try and track materials going back and forth throughout the county there might be a different ordinance to do that.

Ms. Bernard stated that maybe that is something we need to examine because there should be some kind of trail.

Mr. Gingerich stated that this is a minimum standard for an ordinance so the county always has the right to require testing and require source locations. When fill is coming from a different source you always have the ability to require more testing.

Mr. Bernard stated that maybe that needs to be the question – Is the fill coming from offsite or onsite?

Mr. James asked if there is any place in the ordinance where the Health Department comes into play on this. People keep asking him why the Health Department was not involved with the issue on Hieland Road. Is there anything that references a reason why the Health Department should be involved in a soil transfer from one site to another?

Mr. Bevis from the Health Department stated that in relation to the installation of a septic system on a particular property where fill has been brought in that is going to raise more than one foot then there is a requirement in the sewage code that that fill would have to sit for at least one year to settle before testing could be done to determine the perk rate or the soil suitability for the type of septic system that would be involved. Also, there is some language that indicates that the soil fill that is brought in needs to match somewhat the existing soil that is onsite.

5. Subdivision

- Jordan Grove Subdivision - Extension

Mr. Skimerhorn stated that the Jordan Grove Subdivision is an 18-lot subdivision that is in Illinois Diversatech Campus. The preliminary plat was approved on August 29, 2007. Their subdivision ordinance requires the final plat be submitted within two years of the approval of the preliminary plat. The developer has run into some problems based on the economy and has asked for three years of extensions on that deadline. That deadline has come up again this month and they are asking for another three year extension.

Mr. James made a motion to approve and Mr. Tripp seconded it. Motion carried with a voice vote.

Mr. Stauffenberg asked what side of the Diversatech entrance is the subdivision.

Mr. Skimerhorn stated that it is actually inside Diversatech. It is a redevelopment of one of the internal lots.

6. Planning

- Resolution of Support for K3 River Roundtable Report

Mr. Van Mill stated that they distributed this several months ago but forgot to bring it back on the agenda. He would entertain a motion to table this and have everybody review the study for one month and then bring it back next month for action.

Mr. James made a motion to table and Mr. Washington seconded it. Motion carried with a voice vote.

- K3 County Enterprise Zone Expansion – City of Momence

Mr. Van Mill stated that earlier this year they incorporated Momence in the Kankakee County/Manteno Enterprise Zone which is the first local unit of government that has been added to the enterprise zone since its inception back in the mid 1980's. They went through a pretty detailed process to determine the properties in which they wanted to include into the zone but unfortunately sometimes a few are missed. They are asking today for consideration of a map amendment that includes a number of additional

properties for further consideration to be added to the enterprise zone. They have held a public hearing and they did get additional input from the property owners in the city. The city does support this application. They need to pass ordinances amending the legal description in the intergovernmental agreement. In about a month they will probably be bringing back to the committee an additional expansion request that will come from the south side of this map to incorporate properties in the Hopkins Park/Pembroke area. They are waiting for additional legal descriptions to be done before they do that. The reason that they are bringing this one ahead of that one is because there is an imminent project so the city has requested that this get moving and they are trying to appease the city for that reason.

Mr. Vickery made a motion to approve and Mr. Washington seconded it.

Discussion

Ms. Bernard asked if that would put Baker & Taylor in the enterprise zone.

Mr. Van Mill stated that Baker & Taylor is already in the enterprise zone.

Ms. Bernard asked what the total value of the property we are looking at is.

Mr. Van Mill stated that he does not know.

Ms. Bernard asked if he could get that information.

Mr. Van Mill stated that the enterprise zone doesn't necessarily add value to the property.

Ms. Bernard asked how much revenue we would lose if all the properties being added to the enterprise zone decided to take tax breaks.

Mr. Van Mill stated that the only tax break that they would get is if they would do something to improve real estate value.

Mr. Van Mill stated that the new enterprise zone legislation just got passed by Governor Quinn and they are going to have to reevaluate the policies of enterprise zone in the next 18 months. They are at the tail end of the life cycle of this enterprise zone. They can look at incentives based upon job creation and capital investment. Right now given our economic times, he thinks that we need to encourage capital investment to keep the companies here rather than having them invest outside the community.

Ms. Bernard asked if, by doing this now before the new law goes into effect, that grandfathers them in.

Mr. Van Mill stated once the new legislation becomes effective every community in the State of Illinois is now eligible for enterprise zones. We will have to compete with every county and every municipality in the State of Illinois for a new enterprise zone. They all have to go through the same application process.

Ms. Bernard stated her concern is that the way that we have been doing enterprise zones and business development has not really improved the standard of living in this county for a lot of people. She thinks that there is a better way.

Mr. Nixon stated that given the status of Illinois versus our neighbors around us we need to use every item available to us by the state including the enterprise zones to encourage development and investment in our communities.

Mr. Vickery stated that the City of Momence has gone through the necessary requirements and they have requested this so he thinks the county needs to extend a helping hand by getting this moving forward.

Ms. Bernard stated that enterprise zones are detrimental to infrastructure and development from the government perspective because it starves government of revenues. It is corporate welfare and we need to find a better way to do it.

The original motion carried with a voice vote. Ms. Bernard opposed.

- Reappointments to the K3 County Regional Planning Commission
 1. Mel Blanchette
 2. William Bukowski
 3. Loretto Cowhig
 4. Rich Howell
 5. Ralph Paarlberg
 6. Samuel Payton
 7. Chris Tholen

Mr. Hess made a motion to combine them and Mr. Washington seconded it. Motion carried with a voice vote.

Mr. Stauffenberg made a motion to approve the reappointments and Mr. Washington seconded it. Motion carried with a voice vote.

7. Transportation

- Contract with IDOT for State Metro Planning

Mr. Lammey stated that they don't have a contract yet so it will be on next month's agenda.

- Contract for FY13 Downstate Operating Assistance Grant (Rural Transit)

Mr. Lammey stated that he is asking the committee to approve the chairman to sign this. The grant application was approved about four months ago and now the contract has been sent to them and they need to have it signed and send it back.

Mr. Washington made a motion to approve and Mr. Vickery seconded it. Motion carried with a roll call vote of 13 ayes and 0 nays. Voting aye were Mr. Bossert, Mr. Nixon, Mr. Vickery, Ms. McBride, Mr. Washington, Mr. Olthoff, Ms. Bernard, Dr. Pagast, Mr. Tripp, Mr. Hess, Mr. Stauffenberg, Mr. James, and Ms. Polk

- Illiana Presentation September 13, 2012

Mr. Lammey stated that he would like the committee to mark September 13 on their calendars. That is a Thursday at 1:30 on the 4th floor of the K3 Public Library. There will be a presentation on the Illiana study. It is the only time that they have had presentation in Kankakee County on the study. He encouraged everyone to come. They will have a chance to ask any question that they want to ask. There will be a 37 ft.

rollout of the B3 corridor so you get a chance to take a look at what they are going to do and where they are going to do it.

8. Old Business

Dr. Pagast stated that on May 8 there was an announcement that the Solid Waste Management Plan was established. That is an accomplishment but unless what has been established is implemented they really don't have a plan and might even have to fall back on the plan which was established in 2004. How are we coming along with the establishment? Are they estimating at this point or do they have complete data? Why is it not published online?

Mr. Van Mill stated that the plan is online. He will put the presentation that he presented that showed the haulers' data online, as well.

Dr. Pagast stated that they may come up with much higher amounts of garbage collected which would then lead to people, after five years, to say that because there is such a tremendous increase in garbage collection a possibility of a landfill being built in the county has to be considered but without any data that route will never be justified.

Mr. Vickery stated that there was some concern by constituents and board members on the soil testing issue. Would it be the committee's pleasure to have Mr. Van Mill explore when soil is transferred in. He doesn't know how cumbersome that would be but it raised its ugly head and maybe some research can be done and it be brought back.

Mr. Bossert stated that he would raise the question that if we get into the business of requiring testing does that mean that we are then certifying that it passes and if a subsequent test turns up a contaminant is that our liability.

Mr. Olthoff asked if we could find out what the policy is of other counties.

Mr. Bossert stated that we can check around.

Mr. Vickery stated that if we had it tested by a laboratory he would assume that that would stand on its own.

Mr. Olthoff stated that he believes that there are regulations in place that states that contaminated soil cannot be moved or if it is contaminated it has to go to a site specifically designed for that.

Mr. James stated that he would like to point out that the soil that we were talking about on Hieland Road was certified with a test by IDOT. It was a federal project and had strict restrictions but that did not modify the attitude out there so he doesn't know how much weight could be given to it if we did get involved in it. It would be something to take a look at on a one-to-one basis. He agrees with Mr. Bossert, if we got involved certifying everything, there is some liability attached to it and that should be a concern to us.

Mr. Stauffenberg stated that with him being in the insurance company if they tested soil and deemed it ok and something turned up they are liable.

Dr. Pagast stated that if that is the case why is anything analyzed. Somebody has to take the responsibility to analyze it if there is good reason that something is contaminated.

Mr. Bernard stated that six or seven years ago they were developing River Bend out by Limestone and the Health Department recommended that this subdivision include municipal water and a sewer system – no wells or septic- but this board voted to waive those requirements. Are we going to be liable because we waived that in the future?

Mr. Boyd stated that he is not going to speculate as to whether we will be held liable for contaminants found in the future as a result of a recommendation made by the Health Department in the past. However, the general policy is that if you are aware of a contaminant and you let the landowners or the public know that a contaminant is there and you allow development at their own risk you significantly reduce the possibility of being held liable for future findings of contaminants. The more time that passes the less likely it is that you will be liable because things like MTBE's travel and other things that occur will change the condition of the soil and the water that are beyond our control. The bigger issue is do we test or do we not test. The greater concern from a legal standpoint and a liability standpoint is not did we know and let people act anyway after giving them our knowledge but did we attempt to know and fail when we shouldn't have failed and then allowed people to build or develop when more thorough testing would have led us to a different conclusion. The idea is if we test an obligation is in some duty placed upon us to test in such a fashion that it doesn't become a rubber stamp test. With the soil issues and fill, we can talk at great length about what we want to test for, what is important, what is not important, how seriously do we test, what does it cost, who pays the bill, etc. Who should do testing? The State of Illinois should do the testing, if at all possible, because they have the ultimate immunity from prosecution or from liability for failure to discover substances and then discovering them in the future with future tests. We don't want to become the State of Illinois at that level but at the same time if you are going to test it is a delicate process where we have to decide exactly what is going to be tested, who is going to do it, and with whom, if anyone, are we going to share the results.

Mr. Vickery stated that he thinks that the discussion was good and it may help answer some of the constituents' questions.

9. New Business

10. Adjournment

A motion to adjourn the meeting at 9:56 a.m. was made by Mr. James and seconded by Mr. Nixon. Motion carried.

Bill Olthoff, Chairman
Joanne Langlois, Executive Coordinator