

MINUTES
WILL COUNTY LAND USE AND DEVELOPMENT COMMITTEE
March 24, 2009

Pledge of Allegiance

Chairman Weigel led the pledge of allegiance.

Call to Order:

Chairman Weigel called the meeting to order at 10:34 a.m.

Members Present at Roll Call:

Tom Weigel, Debbie Rozak, David Evans, Katrina Deutsche, Michael Wisniewski, Sharon May and Kathleen Konicki (arrived at 10:57).

Members Absent:

Staff Present:

David Dubois, Curt Paddock, Brian Radner, Steve Lazzara, Anita Wesse and Leigh Kelley.

State's Attorney Present:

Melanie Manning

Others Present:

See sign in sheet.

Approval of Minutes:

David Evans made a motion to approve the minutes from March 3, 2009; seconded by Michael Wisniewski.

ALL IN FAVOR

MOTION CARRIED (6-0)

Michael Wisniewski made a motion to approve the minutes from March 10, 2009; seconded by David Evans.

ALL IN FAVOR

MOTION CARRIED (6-0)

OTHER BUSINESS

- 1. Subdivision Ordinance, Articles 32-05, Ownership and Management of open space, and 32-06, Legal Instrument for permanent protection**

Chairman Weigel asked staff to give an overview.

Mr. Lazzara advised the Committee that we are at the half way mark of the proposed time schedule in bringing the draft ordinance before the County.

Mr. Lazzara explained that amendments to sections 32-05 and 32-06; which were a result of the two consultants and feedback from the March 3, 2009 meeting. The consultants provided some draft language, which was approved by our State's Attorney's office and under their advisement those changes were incorporated into the draft ordinance. The new language creates a more binding atmosphere that will ensure that SSAs are established only as a backup funding mechanism and provide provisions for how they will be implemented and how they would be levied if necessary.

Chairman Weigel suggested Mr. Lazzara go section by section to discuss the proposed changes.

Minutes

Land Use Planning, Zoning & Development Committee

March 24, 2008

Mr. Lazzara started on Page 63 Section 32-05-D, line 20- he explained this section refers to the County Board acknowledges that SSAs be established and that they can be levied when necessary. The next approximately thirty (30) lines state that the language that is provided will allow the County to carry out those duties.

Chairman Weigel stated he would like to make a change to line 8 he suggested the word “shall” be changed to “may”. If the homeowners want to do it themselves, he thinks that would be acceptable. Mr. Lazzara stated that staff would concur as long as the necessary training was in place with the homeowners.

Mr. Lazzara stated that lines 20 – 31 is the text which is an overview that allows the County to go ahead and establish the SSA, it determines that this would be a taxable levy that will be levied at a certain time when it is deemed necessary.

Mr. Paddock pointed out to the Committee that there was intentional inclusion of the words Maintenance Service Area – to clearly distinguish this type of special service area that this is for infrastructure.

Debbie Rozak asked if it is possible for the phrase Dormant Maintenance Special Service Area requirement to forewarn people and Mr. Paddock answered that members of the realtor’s community have expressed concern or reservation about the word dormant.

Mrs. Manning referred to Page 65 of the handout under the definition section - Maintenance Special Service Area- explains this is in the event that the property owners association fails to adequately carry out its duties as determined by the Plat Committee. Although there is no specific reference to this being dormant, by definition, that area could not come into effect unless the homeowners association failed to carry out its duties to maintain the open space areas. This indicates that a special service area tax would occur in that event.

Mrs. Manning stated she would hesitate to include the word dormant because there is nothing in the statute authorizing us to impose this levy, to define what dormant means. Different organizations have different ways of describing what we are trying to do, which is not do this up front but in the event an association fails to carry out its duties.

Mrs. Rozak asked if we did not have the SSA what would be our recourse to make a homeowners association do what they need to do to upkeep, would we have to take them to court and Mr. Lazzara answered yes. Without the SSA in place they would be treated as any other violation. The procedure would be followed to bring a lawsuit.

Mrs. May stated the realtors previously stated they did not like the wording SSA, is it a legal requirement to call it a special service area and Mrs. Manning answered that the statute that gives us the authority to impose this is called the Special Service Area Tax Law and it refers to the areas that would be taxed as a special service area so she would be hesitant to call it something else. No matter what we call it, it is still a special service area.

Mr. Wisniewski asked for clarification and Mr. Paddock explained that what Mrs. Manning just explained is given the language of the authorizing state statute stated it might not be appropriate to call it something other than what it is. There is a definition for Maintenance Special Service Area in Section 32-07A, this definition gives particular attention to indicating that it arises only when there is failure of the property owners to adequately carry out its duties.

Mr. Tom Joseph (Illinois Association and Three Rivers Association of Realtors) explained that under Section 32-05 –D line 24, they take issue with the words ‘backup funding’. They believe the statute speaks specifically to a front-end special service assessment. Mr. Joseph distributed a handout to the Committee members. With

Minutes

Land Use Planning, Zoning & Development Committee

March 24, 2008

regard to line 36 in Section 32-05-D he stated they believe there has to be an objection period and that right cannot be taken away from the individual property owner, they must be able to have a hearing and to object to that process under the statute.

Chairman Weigel asked if an objection period would be included and Mrs. Manning answered that it already is.

Mr. Joseph stated our language suggests that we would have them waive their right to an objection. Mrs. Rozak asked what line he was speaking about and he responded lines 39-41. Mr. Joseph explained that we cannot ask them to waive their right. Mr. Joseph also asked for more clarification of the word maintenance. He recommended running the plat of land with an agreement with the developer and have a homeowners association agreement which details that if the homeowners association goes defunct that there be a maintenance agreement in place with a consultant that would do the maintenance that we are looking to apply with a broad brush SSA. This issue can be resolved with some common sense.

Homeowners association's agreements offer a consultants group that would represent that homeowners association and maintain the property.

Mrs. Rozak asked Mr. Joseph about lines 39 – 41, she explained that it is not that someone's rights are being waived. There is still the objection period. Mr. Joseph stated their interpretation is that the owner of property would then be waiving their right to appeal or object.

Mr. Paddock explained that anyone is free to interpret or raise concerns about the aspect of wording and reinforced to the Committee that the proposed language before them has been approved and found to be conformant with state law by the State's Attorney's office of Will County.

Chairman Weigel asked Mrs. Manning if she concurred with what Mr. Paddock had just explained and she answered yes. Mrs. Manning explained that the way we are contemplating establishing this, there would probably only be the developer who would own this property when this is happening and he would be the one applying for the special service area so she did not foresee him objecting, although he still has a statutory time period to object. We are also contemplating requiring the developer to record the Declaration of Consent with all of the parcels of property and that Declaration of Consent would consent to the establishment of a special service area. Essentially when someone decided to purchase they would be waiving their consent or waiving their objection to the establishment of a special service area by then it is almost mute because it has been established you are really putting them on notice. Therefore lines 39-41 gives the States Attorneys Office the latitude to say you don't have to wait for the objection period to expire because we have consent from everyone. To err on the side of caution she is sure that we will wait for the expiration of the objection period even though we know there probably won't be any objectors.

Mr. Paddock referenced Mr. Joseph's view regarding the conformance of the terminology 'backup funding' with state law and suggested the Committee ask Mrs. Manning to comment on that issue.

Chairman Weigel asked Mrs. Manning if there was anything wrong with that and Mrs. Manning answered no, we have the authority to not necessarily have this upfront it could be dormant. It is not being levied up front it is being created up front.

Mr. Joseph interjected that they have not seen in the statute where it would suggest dormant for backup. Mr. Joseph stated their experience with this issue on the municipal level is per the pre-annexation agreement when the developer enters an agreement. He owns the property and enters an agreement with a municipal body under the pre-annexation agreement. The County is not authorized to engage in pre-annexation so that changes the paradigm and changes the discussion.

Minutes

Land Use Planning, Zoning & Development Committee

March 24, 2008

Mr. Lazzara continued with an overview of lines 32 – 41.

Katrina Deutsche asked who the Plat Committee is and Mr. Dubois answered that the LUDC also functions as the Plat Committee and in that role specifically to deal with preliminary plats and final plats as well as pre-authorization to foreclose, etc.

Mr. Dubois asked for the Committee's consent to save Section 32-05-E for the end of the discussion.

Mr. Dubois moved on to Section 32-07-A Declaration of Consent for Maintenance Special Service Area- this is the document that Mrs. Manning had referenced which is recorded, which is consenting to the establishment of the SSA. This is the document that the consultants had referenced as being key and puts everyone on notice and runs with the land so that any future purchasers or owners would be on notice that this is what is on the property.

Mrs. Konicki stated that she would like to see this as a freestanding document and not buried in the covenants and conditions. The consultants indicated that the Declaration of Consent would only be a few pages. Ms. Konicki stated there is no language that requires this to be recorded as a separate document and she thinks it would be appropriate to add that language.

Mr. Paddock explained that staff would be taking the Committee's comments and suggestions and they would be discussed with counsel. In lines 9 – 13 the Plat Committee will have the ability to determine for itself whether the form is acceptable. With regard to the manor in which the document would be recorded as well as made known to property owners in individual transactions would require some additional research.

Mr. Joseph approached and reference Public Act 93-10-13, which was passed in August of 2004. The consultant who spoke was here to speak to a specific agenda. Mr. Joseph read part of a paragraph Section 27-40. This is the law. Whatever the consultant recommends to you is what they are recommending for a useful purpose, they don't object to that. They are simply stating this is the law. This is how it is recorded.

Mr. Dubois continued with line 15 under Section 32-07- A and explained that these are definitions that would be added to Section 60. Mr. Dubois gave an overview of the proposed definitions there were no questions or comments from the Committee.

Mrs. May asked if lines 27- 39 on Page 65 referenced the paper that Mr. Joseph passed out and Mrs. Manning answered yes, lines 27-39 were prepared in accordance with 35 ILCS 200/27-5.

Ms. Konicki felt it might be a good idea in the Declaration of Consent to reference the recordation number of this and Mr. Paddock stated he would research this.

Mr. Dubois continued with Page 64, Line 3, Section 32-05-E and explained that the Land Use Department works closely with the Will South Cook Soil & Water District (WSCSWD) and the district has quit a bit of expertise in certain areas.

Staff is looking for the Committees consent to come back with draft text that would integrate the District into an initial review of the management plan as well as through inspections through what we would call the initial phase of the development and through the open space development where they would have the expertise to go out and monitor things and make sure things are being developed the way they should be. The second phase is that after five years it would be the landowner or homeowners association through a consultant (that the Committee would designate or approve) would have annual inspections. Up to year five we would tap the District as a resource and then ultimately turn it over to the association for five years for their annual inspections.

Minutes

Land Use Planning, Zoning & Development Committee

March 24, 2008

Chairman Weigel stated staff wanted to revise this section and Mr. Dubois answered yes and bring the WSCSWD into the process.

Mrs. Rozak stated this is a good idea.

Mr. Dubois explained that staff would take the comments that were received today and put the appropriate changes into a working draft as well as bring back some draft text.

Mr. Wisniewski asked about page 64, Line 5 – referencing open space and associated facilities and Line 18 only referencing open space, should the words associated facilities also be on this line and Mr. Dubois answered that this entire section would be reviewed for consistency.

Ms. Konicki asked Mr. Paddock if thought should be given to what would be our power to activate, under what circumstances, who could petition us, how many people would have to petition in the subdivision, etc. Is there any kind of minimum showing, like an outside consultant making a determination that intervention is necessary. It is open ended and she thinks the less open ended the better. Mr. Paddock advised that current staff thinking is that when the particular development is being established an integral part of the submittal of all of their plans for this conservation design subdivision, they would be designating those areas which were the natural areas or conservation areas to be preserved. When the management plan is developed it would be a forecast of all of the various types of actions that may be necessary in order to preserve and sustain those conservation areas over time. This would be associated with a budget projection as well that the Land Use staff would review. Mr. Dubois also advised that staff would be bringing back language that would send that same material to the Soil and Water District for advisory input as to it's adequacy. Once this is adopted, there would be initiated a period of time where there would be a series of inspections of the actual installation, restoration and maintenance of those sets of plantings or other activities called for in the management plan. It is hard based upon the wide diversity of particular circumstances that would be involved to project whether one annual inspection is sufficient or if there should be multiple. The management plan would stipulate the number of inspections over the critical first five years and then on into perpetuity.

Mr. Paddock further stated that what would be coming back to the LUDC at the next meeting might suggest that during that critical five year period that schedule of inspections would be performed by the Soil and Water Conservation District. Their input to the Department would be advisory in nature but they would be given considerable credence given the expertise of that particular agency. If in the course of those inspections they found that there was some deviation from the maintenance activities stipulated in the approved management plan then the Department would initiate enforcement actions initially through a letter to the homeowners association telling them the result and findings of the inspection and suggesting the need to develop a corrective plan of action (time limited) to bring their maintenance activities back into conformance with the schedule outlined in the management plan. If there was a failure to be responsive to developing such a corrective plan of action or to implement it after due time staff would then report to this Committee that there appears to be an unwillingness by the homeowners association or developer to fulfill their obligations under the maintenance plan. The normal practice of the LUDC is to conduct a hearing and ask that homeowners association or developer to appear and give their point of view on why they feel they are in conformance with the management plan. Staff would present their evidence and possibly the Soil & Water District as well and at that point the Committee would have to come to a determination whether we have reached that set of conditions that represented failure to carry out the responsibilities of the homeowners association and if that decision was reached that would begin the process of establishing a levy for the SSA.

Ms. Konicki talked about subdivisions where the homeowners associations have a hard time getting the dues and asked if there is anything that guides in regard to activating the SSA and the money coming in where it

Minutes

Land Use Planning, Zoning & Development Committee

March 24, 2008

would go and Mr. Paddock stated there is nothing in the ordinance that stipulates that. There are standard established County procedures in terms of receipt of funds arising out of any type of levy and once those are collected where are they allocated. The current draft does not speak to how those collected funds (should the SSA initiate a levy) and to whom they are distributed. If Ms. Konicki feels there needs to be additional language it can be worked on. Ms. Konicki answered that it might help everyone understand she thought it would be helpful and asked if it would be better to face these things now, to help the homeowners association understand how things work. At some point they need to perform the work or it will be performed by the money collected and be contracted out.

Mr. Paddock advised Ms. Konicki and asked if the Committee wanted staff to look into some alternative language and Chairman Weigel asked staff to check into that.

Mrs. May asked about the definition for maintenance in the special service area and what other things are covered and Mr. Paddock gave a few examples.

Mr. Dubois advised the Committee that staff would address the comments provided by the Committee.

Mr. Lazzara advised the Committee that the public hearing is scheduled for April 28, 2009 and asked if they would prefer a day or night meeting. Mr. Paddock interjected that staff would strongly suggest an evening meeting. Conversation ensued regarding the location of this meeting. Mr. Lazzara advised the Committee of publication time restraints.

Mr. Lazzara thanked the Committee for the leadership and keeping this topic on track

Conversation ensued regarding the upcoming Subdivision Ordinance LUDC meetings and the regularly scheduled meetings.

Chairman Weigel asked Mr. Tom Bartlett if he wished to speak and Mr. Bartlett stated what he has heard is that there is a desire to streamline things and to promote conservation. There is existing law upon which you can lien property through homeowners associations, notifications, he does not feel that those were properly explored because there are lien laws, there is enforcement, there are other methods. SSAs are an excellent tool that has been abused. He knows developers who have told him that they would not do developments if an SSA were involved. Mr. Bartlett suggested for SSA Tax Law to have new terminology that explains they are under a Conservation Area Maintenance Law and within that law there is the perfection of the lien ability to say that you have failed to properly maintain this we then follow outlines that Mr. Paddock explained. He then commented about the negative feelings associated with the term SSA.

Mrs. Rozak asked Mr. Bartlett if he meant that this should be taken to the legislative body and get the name changed and he answered that you cannot change the SSA law name but maybe there should be another section or a new statute that says "when you have conservation areas whether they are turned over to non profits, who wants to burden a non profit with the cost when the homeowners are enjoying it"

REPORTS

ADJOURNMENT

Michael Wisniewski made a motion to adjourn; seconded by David Evans.

ALL IN FAVOR

MOTION CARRIED (7-0)

The meeting recessed at 1:14.