

**MINUTES  
LAND USE COMMITTEE  
FEBRUARY 26, 2018 @ 3:00 P.M.  
ROOM 402**

**MEMBERS PRESENT:** James Dillon - Chairperson, Brian Elsasser, Paul Rosenbohm, Sharon Williams, Brad Harding (*via teleconference*), Barry Robinson, Rachael Parker, Kate Pastucha

**MEMBERS ABSENT:** Thomas O'Neill

**OTHERS PRESENT:** Larry Evans - State's Attorney's Office; Scott Sorrel, Shauna Musselman, Angela Loftus, Gretchen Pearsall - County Administration; Kathi Urban, Andrew Braun, Keith Miller - Planning & Zoning; Mark Little - IT; Doug Gaa, Randy Brunner – Sheriff's Office; Andrew Rand – County Board Chairman; Larry Gilmore - Limestone Fire Chief;

**Call to Order:**

Mr. Dillon called the meeting to order at 3:03 p.m.

Mr. Rosenbohm made a motion to allow Mr. Harding to attend the meeting via teleconference and was seconded by Mr. Robinson. A vote was taken and passed; (7-0) (Mr. O'Neill absent.)

**Approval of Minutes:**

A motion to approve the Land Use Committee minutes from December 18, 2017 and January 11, 2018 was made by Mr. Rosenbohm and seconded by Mr. Elsasser. A vote was taken on the motion and carried. (8-0) (Mr. Harding voted via teleconference.) (Mr. O'Neill absent.)

**Reports/ Other Minutes/Updates:**

Tri-County Regional Planning Commission Minutes: No questions or comments.

Unsafe Structures: No questions or comments.

Development Summary: No questions or comments.

Mr. Dillon made a motion to receive and file the reports.

**Zoning Case:**

002-18-U, Petition of Jason Bird:

Ms. Williams made a motion to approve the Special Use request and was seconded by Ms. Parker.

Ms. Urban summarized the case. A Special Use as required in Section 20.6.2.1.1.b of the Unified Development Ordinance. This section allows for a special use when a proposed land split does not meet the 40 acre minimum lot size in the A-1 Agricultural Preservation Zoning District. The petitioner proposes to divide 21 acres from an existing 76.84 acre parcel in order to construct a single family dwelling. Mr. Bird is proposing to continue farming a majority of the property, which is currently owned by his parents. The property is located on Route 90 in

Millbrook Township. The area consists mostly of farm ground with a few houses. The LESA score was 193.3 out of 300, which is a low rating for agriculture protection. The request is consistent with the Peoria County Land Use Map, which supports the development of farm homesteads for new generations. Staff and the Zoning Board of Appeals have both recommended approval.

Mr. Elsasser stated that he was excited to see a young farmer staying in the family business.

A vote was taken and the motion was approved; (8-0) (Mr. Harding voted via teleconference.) (Mr. O'Neill absent.)

006-18-Z, Petition of Kimberly Irwin:

Mr. Robinson made a motion to approve the rezoning request and was seconded by Mr. Rosenbohm.

Ms. Urban summarized the request. A Rezoning request from "C-1" Neighborhood Commercial to "C-2" General Commercial. The petitioner proposes to rezone this parcel in order to operate a tavern. A tavern has been located on this property since 1844 and was previously allowed under a Non-Conforming Use. If a Non-Conforming Use ceases to operate for a period of more than 6 months, the Non-Conforming Use becomes void. Ms. Urban stated that the tavern at this location did cease to operate as of April of 2017. The petitioner has applied for the Rezoning and Special Use in order to reopen a tavern on the property. Ms. Urban added that the tavern was owned by the same person as it was previously; however, it would be opened under new management. There are 2 consents and 1 objection on file. There are other properties in the area zoned Commercial. The new tenant does not intend on playing music outdoors and has also stated that they will fence in the patio area to help mitigate noise. The parcel is located in a floodplain so any possible future improvements will require the owner to meet floodplain development requirements. The road commissioner had no comment. Staff and the Zoning Board of Appeals have both recommended approval.

Mr. Rosenbohm asked about the objection, and Ms. Urban explained that the objector's main concern was that there was already a tavern nearby and she did not believe there needed to be two taverns in the area. Ms. Urban added that the two consents came from the same family as the objector.

A vote was taken and the motion was approved; (8-0) (Mr. Harding voted via teleconference.) (Mr. O'Neill absent.)

007-18-U, Petition of Kimberly Irwin:

Mr. Elsasser made a motion to approve the Special Use request with restriction and was seconded by Mr. Robinson.

Ms. Urban summarized the request. A Special Use request from Section 20-5.8.2.1.n.1 of the Unified Development Ordinance, which allows for a tavern, not exceeding a floor area of five thousand (5,000) square feet, if located closer than five hundred (500) feet from any residential district, religious, or school in the "C-2" General Commercial Zoning District. The petitioner proposes to operate a tavern located immediately adjacent to a residential district. The petitioner stated that they would be placing a fence around the patio and also did not plan to have music outside. The hours of operation proposed would be 7:00 a.m. – 1:00 a.m., Monday-Sunday, with 5 employees being hired in the first year. In the second year of business, the manager is planning to offer meals and would also intend to hire more employees. Staff recommended approval with

the restriction that a privacy fence would be constructed within a year. The Zoning Board of Appeals recommended approval with the same restriction.

Mr. Dillon asked if a permit would be necessary for the fence, and Ms. Urban responded that this was correct. Mr. Robinson asked if the previous tavern was open for as many hours as this tavern was proposing to be, and Ms. Urban stated that she was unaware of what the operating hours were for the previous tavern. Ms. Urban added that the one objector did not mention anything about the hours of operation. Additionally, Ms. Urban stated that she thought the proposed hours were to accommodate the eventual plan to serve meals at the tavern.

A vote was taken and the motion was approved; (8-0) (Mr. Harding voted via teleconference.) (Mr. O'Neill absent.)

**Resolution:**

Amendment to Chapter 12, Building and Property Maintenance Code:

Ms. Williams made a motion to approve the resolution and was seconded by Mr. Rosenbohm.

Mr. Braun explained that there were two major changes proposed within the amendment. First, staff recommended changing from the 2011 National Electrical Code (NEC) to the 2014 National Electrical Code (NEC). Mr. Braun added that six communities in the surrounding area were already enforcing the 2014 NEC with another community planning to move to the 2014 NEC soon. Additionally, one nearby community was enforcing the 2017 NEC. Mr. Braun stated that staff had also spoken with the Home Builder's Association about the proposed change. If approved, staff was recommending that the change would be effective as of April 1, 2018.

Mr. Braun stated that there were only minor differences between the 2011 NEC and 2014 NEC, with major difference being that the 2014 NEC required arc fault and ground fault circuit interrupters in certain rooms. Mr. Braun stated that the change should not make a significant impact on builders considering the fact that there were minimal changes between the two codes and also because several nearby communities were already enforcing the 2014 NEC.

Second, Mr. Braun explained that Peoria County currently follows the Illinois Energy Conservation Code, however, the ordinance currently references the International Energy Conservation Code. On January 1, 2013, the State of Illinois passed a regulation that all communities within Illinois would follow the Illinois Energy Conservation Code, which is similar to the International Energy Conservation Code.

Mr. Rosenbohm asked if there was a difference between the 2014 NEC and 2017 NEC and also asked why the proposed amendment would not move to the most current code available. Mr. Braun explained that the only community currently enforcing the 2017 NEC was the City of Washington. Mr. Braun added that staff did not want to be more restrictive than most surrounding communities and also did not want to skip a code cycle. Mr. Braun stated that he could not comment on the differences between the 2014 NEC and the 2017 NEC, but that Keith Miller could address that if necessary.

Mr. Elsasser asked if the Home Builder's Association had any issues with the proposed change, and Mr. Braun responded that they did not. Mr. Braun added that most builders were already working in communities that enforced the 2014 NEC and that most would not have to make adjustments. Mr. Elsasser stated that he was skeptical of the change from the International Energy Conservation Code to the Illinois Code, but that he would look into it before voting on it at the County Board meeting.

A vote was taken and the motion was approved; (8-0) (Mr. Harding voted via teleconference.) (Mr. O'Neill absent.)

**Discussion:**

**Code Enforcement Update & Request for Policy Direction:**

Ms. Urban stated that staff had been working with the State's Attorney's Office and the Sheriff's Office on initiatives to help encourage compliance with Peoria County codes. Ms. Urban stated that the current process is to send non-complaint violations to the Hearing Officer who can then assess fines and fees. The State's Attorney's Office can then take these cases to court if fines and fees are not paid. Ms. Urban stated that it is a time consuming process for the State's Attorney's Office, therefore, many of the cases with smaller fines and fees were not being processed. Ms. Urban stated that staff had been working with the State's Attorney's Office on a process where hearing orders could be recorded and for those cases with fines and fees in excess of \$500, liens can be filed directly. Property owners will still have a 35-day appeal period and a 30-day collection letter would be sent before a lien was placed on a property. Ms. Urban stated that staff hoped that being able to place a lien on a property more immediately would encourage faster compliance from property owners.

Additionally, Ms. Urban stated that staff had been working with the State's Attorney's Office and the Sheriff's Office on a process to tow inoperable vehicles. Ms. Urban added that there was a process to tow vehicles approximately 15 years prior, but that this was discontinued when administrative search warrants were required for the towing. Ms. Urban added that compliance with inoperable vehicle complaints has decreased since towing was discontinued. Ms. Urban stated that staff would like to work with the State's Attorney's Office to acquire the administrative search warrant and then the Sheriff's Office to conduct the towing. Ms. Urban stated that the Sheriff's Office already has a towing process in place that could be utilized for this process. Ms. Urban further stated that both potential changes were allowable under state statute and the Peoria County Code; however, staff was seeking policy direction as to whether or not the board would like to see these changes enacted.

Mr. Elsasser stated that he felt the two changes would be beneficial, especially for repeat offenders. Mr. Elsasser stated that the only challenge would be that the county would not receive any payment on the lien until the property was sold. Mr. Elsasser stated that he was a strong advocate of making the fines more substantial in order to create more urgency for people to comply. Mr. Elsasser stated that he also felt that there should be an ordinance in place that would require people to have electricity hooked up because then maybe people would take care of the abandoned homes.

Mr. Dillon stated that some violators will drag out the process as long as possible, fix the problem, and then a couple months later will repeat the same violation and start the process all over again. Mr. Dillon stated that these people know there is little repercussion for leaving things unfixed. Mr. Elsasser stated that the City of Peoria has ticketing authority which he was interested in enforcing in the county; however, Peoria County does not have the authority to ticket. Ms. Williams stated that she would also like to see a registration for landlords in Peoria County, but for the same reasons Peoria County does not have authority to do so.

Mr. Dillon stated that the policy direction for staff was to move forward on both items.

**Fireworks Sales Regulations and Request for Policy Direction:**

Ms. Urban stated that she had spoken with Mr. Rosenbohm and Chief Gilmore, who is the Limestone Fire Chief, about this issue prior to this discussion, and then staff had done more

research regarding the issue of fireworks sales. Ms. Urban stated that in addition to speaking with Chief Gilmore, staff had also spoken with the State Fire Marshall as well as the State's Attorney's Office.

Ms. Urban explained that there are two types of fireworks – novelty and consumer. Novelty fireworks are all specifically outlined in the State of Illinois's Pyrotechnics Use Act. Novelty fireworks are permitted at all times and the State's Attorney's Office has advised that Peoria County has no authority to regulate these types of fireworks. Ms. Urban stated that it is illegal to sell consumer fireworks unless the individual is registered with the state Fire Marshall and the Fire Marshall has received a letter or permit from the local jurisdiction that allows them to sell from a specific location. Ms. Urban added that these individuals are then only allowed to sell fireworks to those individuals that are permitted to have fireworks displays. Currently the Sheriff's office issues permits for displays and they typically only issue 4-5 permits of this kind annually. Ms. Urban explained that staff is looking for direction on whether or not they should move forward with regulation of consumer fireworks in regards to permitting and zoning.

Ms. Williams asked if Planning and Zoning would regulate the building that fireworks are stored in, and Ms. Urban stated that if someone were storing consumer fireworks, the building would have to meet building code requirements. Mr. Rosenbohm asked what the county could do if someone were storing or selling consumer fireworks without the proper permissions, and Ms. Urban responded that an individual had approached Planning & Zoning about storing fireworks in a building in Peoria County and had been sent away with the requirements for the building code. Ms. Urban explained that this individual had not been back with any further information. Mr. Rosenbohm asked what could be done if the individual had moved into a building without the proper permits, and Ms. Urban responded that staff would not be able to go in the building without an administrative search warrant. Mr. Evans confirmed that this was correct.

Mr. Dillon asked if the ATF was involved in consumer fireworks regulations and Chief Gilmore responded that it is somewhat unclear who can enforce what regulations when it comes to fireworks. Mr. Gilmore explained that the Pyrotechnics Act requires people to take two written tests at the local fire department in order to receive a certificate that they can then take to the sheriff's office for approval to use the fireworks. Mr. Gilmore added that the certificate from the fire department was also necessary for the purchase of consumer fireworks; however, there is no one policing the unlawful sale of consumer fireworks to people without the proper certification. Mr. Gilmore further stated that in his 5 years with the Limestone Fire Department, they had not been approached by anyone to take these tests for certification. Mr. Gilmore stated that he knows for a fact that consumer fireworks are being stored in a building in Peoria County because he has seen them being transported from one building to another. Mr. Gilmore stated that the problem lies with the fact that the State Fire Marshall has stated that it is up to the local municipality to create and enforce requirements for consumer fireworks. Mr. Gilmore stated that because Peoria County has no regulations, there is nothing that can be done.

Ms. Williams stated that she has had complaints regarding the storage of fireworks in her area and felt that something needed to be done to address the issue. Ms. Pastucha asked if the vehicles transporting the fireworks were placarded for hauling hazardous materials, and Mr. Gilmore stated that they were. Ms. Pastucha asked if there were any violations regarding the storage of hazardous materials, and Ms. Urban stated that there are specific building code requirements to store materials of this kind. Ms. Urban restated that staff would not be able to enter the building without an administrative search warrant. Mr. Gilmore stated that unfortunately the state hands out the rules, but leaves it up to local governments to enforce them.

Mr. Rand stated that Beth Hinchee of 1027 N. Maplewood, Peoria, had been contacting him about the use of consumer fireworks in an area near Airport Road where she has stabled horses. Mr. Rand stated that Sheriff Asbell looked into the issue last year around the 4<sup>th</sup> of July and that there is unfortunately no clear answer on who can enforce who uses these fireworks. Mr. Rand stated that the Sheriff's Office had spoken with the owners of the property using these fireworks and explained the negative impact this use has on the surrounding area, but that no other action could be taken. Mr. Robinson asked when fireworks of this type were permitted for sale in Illinois, and Mr. Gilmore responded that he was unsure of the year when this changed.

Ms. Urban stated that Peoria County is not the only municipality that has confusion over fireworks. Ms. Urban added that in speaking with other communities, several of them had responded that they were not aware of fireworks regulations and would do whatever was mandated by the state. Ms. Urban stated that the State Fire Marshall had responded that it is up to the local jurisdictions to decide how to enforce the regulations. Ms. Urban further explained that the board could either decide to not allow the sale of consumer fireworks in Peoria County; or allow the sale, but decide how the issue could be regulated and policed more effectively.

Ms. Pastucha asked if anyone had checked with the EPA about whether or not they could regulate or enforce the issue, and Mr. Gilmore responded that he was not aware of anything the EPA would be able to do to help. Mr. Dillon stated that he thought the best option would be to try and regulate roadside stands selling fireworks. Mr. Dillon stated that he thought that enforcing the use of fireworks would be very difficult, but that maybe the regulation of sale would help create a decrease in use. Mr. Dillon added that the unfortunate part is that people could just drive to the next county or state and purchase them anyway.

Mr. Rosenbohm stated that he did not want to jeopardize sellers of novelty fireworks by making regulations. Mr. Dillon explained that the State's Attorney's Office had advised that Peoria County could not regulate novelty fireworks. Mr. Dillon added that the committee was only concerned with discussing what to do about consumer fireworks. Mr. Dillon asked if the roadside sales tents were paying state sales taxes, and Mr. Evans responded that it was part of the State Fire Marshall's requirement for application to provide the Tax Identification Number. Mr. Evans stated that if the seller had the proper permit for sales, they should be paying sales tax.

Mr. Rosenbohm asked if a permit was required for roadside sales, and Ms. Urban stated that permits were not required for temporary roadside sales. Ms. Urban reiterated that Peoria County had no authority to regulate novelty fireworks. Mr. Gilmore stated that many of the roadside stands sold consumer fireworks and that most people are unaware that it is illegal to purchase them without proper certification. Mr. Dillon asked if a permit could be required for roadside sales of fireworks, and Ms. Urban stated that if the board determined that they would like a permit to be required for consumer fireworks, staff could research the issue. Mr. Evans explained that the county also had the option to not allow consumer fireworks sales of any kind in Peoria County.

Mr. Rand asked if there was any ability to deal with the use of consumer fireworks in the county, and Mr. Dillon stated that he hoped the regulation of sale would help with the use. Mr. Dillon added that in West Peoria the fire department and police department respond to those types of complaints. Mr. Rand stated that the police department is inundated with complaints about fireworks around the 4<sup>th</sup> of July. Mr. Rand stated that there needed to be more consequence for the use of these types of fireworks. Mr. Dillon asked Mr. Gilmore what counties in Illinois had stricter regulations regarding fireworks, and Mr. Gilmore stated that he would have to look back at his notes. Mr. Dillon stated that his suggested direction would be for Planning and Zoning to

research the issue further and create an ordinance to allow consumer fireworks with permits and regulations. Mr. Rosenbohm agreed, but added that people are going to travel and get the fireworks anyway.

Ms. Pastucha stated that she was looking at the IDNR website and asked if anyone had spoken with them about the issue. Mr. Evans stated that he did not believe a conservation officer would have jurisdiction over such an issue. Mr. Gaa added that the IDNR does monitor explosives; however, he did not believe they would be concerned with fireworks. Mr. Dillon stated that he believed that the only way to really limit the use of consumer fireworks was to limit the sale, even though people could still drive to a neighboring county to purchase these fireworks. Ms. Pastucha stated that most people likely assume that if a firework is being sold, then it is an allowable type of firework.

Ms. Urban stated that Planning and Zoning staff would continue to research the issue with the State's Attorney's Office and the Sheriff's Office and come back with an ordinance for permitting and regulating this issue.

**Miscellaneous:**

Mr. Elsasser introduced Bob Wilson, Becky Wilson, and Matt Hawkins who were present to discuss an issue. Mr. Dillon asked Mr. Braun to explain the situation to the committee. Mr. Braun stated that the issue was with a potential land split and the requirement for a test well on the property as a part of the application process for the Special Use. Mr. Braun stated that in the case of a land split in an Agriculture Zoning District, the ordinance requires the petitioner to demonstrate the availability of a reasonable amount of water on the property that they are wanting to split. Mr. Braun added that this amount of water is specifically 3 gallons per minute. Mr. Braun stated that a test well report or well construction report would have to be submitted specific to the property to be split. Prior to the 2006 ordinance, the requirement for adequate water still applied as part of the subdivision ordinance, although no specific documentation was required. Mr. Braun stated that this standard has been required for decades, which was put into place to protect a buyer from purchasing a property that did not have an adequate amount of water.

Mr. Braun stated that he had done some research in the last month with 10 well contractors licensed by the Illinois Department of Public Health and discovered that 8 of these companies drilled for wells. Of those 8 companies that drill, 4 offered test hole services that would test for how much water was available to the property. Mr. Braun then pulled up an aerial view of the property on the map, which is located in Radnor township. Mr. Braun added that, in speaking with the well contractors, this is an area of concern when it comes to availability of water. Many wells in the area are over 400 feet deep. Mr. Braun stated that there is an existing house on the property and that it was his understanding that the owners wished to split off a 2 acre portion of the 9 acre property. Mr. Dillon clarified that the owners had not applied for a Special Use at this time, but had been speaking with the Planning and Zoning Department about what they were intending to do.

Mr. Elsasser stated that it was his understanding that Mr. Hawkins was currently living in the house and was interested in purchasing 2 acres from the current owners of the 9 acre property. Mr. Elsasser stated that he did not understand why the proof of sufficient water was required when the current owners had no intention to develop the remaining land after the split. Mr. Elsasser stated that proof of adequate water should be part of the building permit process instead of the Special Use process. Mr. Dillon stated that to say the remaining property will never be developed is not possible because intentions, plans, and ownership can change over time. Mr.

Dillon added that the county has never waived water requirements. Mr. Dillon added that the county was not requiring a full working well to be drilled, only a test well that could prove adequate water.

Bob Wilson, owner of the property, stated that they have not been able to find a well driller in the area that would dig a test bore. Mr. Wilson stated that all the quotes received so far were for a well at a cost of approximately \$20,000. Mr. Dillon stated that Planning and Zoning, along with the Health Department, had researched the issue with companies who do licensed work within Peoria County and had found that several companies that provided test well services for a much smaller fee than digging an entire well.

Mr. Rand asked whose district this property was in, and Ms. Wilson responded that Mr. Harding was their County Board Representative. Ms. Wilson added that she had tried to get in touch with Mr. Harding for weeks and that he had not responded. Ms. Wilson stated that she had received correspondence from the Department of Planning and Zoning with contact information for four companies that would do a test well. Ms. Wilson stated that she had spoken with Ed Cosby, who had told her he did not drill test holes, and had also spoken to another company that stated they did not do work in Illinois yet. Mr. Dillon asked Mr. Braun if he had spoken with any of these four companies, and Mr. Braun responded that he had also spoken to Ed Cosby. Mr. Braun added that Mr. Cosby had told him he had a piece of equipment that he could use specifically for testing an unfamiliar area for water availability and that the cost would be approximately \$1500 for the service.

Mr. Elsasser stated that his concern was for the owners of the property and that if someone were to purchase this property for development in the future with no proof of water, then that would be their problem for not researching the property fully before purchase. Mr. Elsasser stated that it should be a part of the building permit process, not the Special Use application process for a land split. Mr. Dillon stated that he disagreed, and that the proof of water would protect a potential buyer from being unable to develop the property after purchase. Mr. Dillon pointed out that this piece of property was surrounded by homes, and as such, would be a very desirable property for someone to develop in the future. Mr. Dillon stated that he understood that the current owners currently did not have an intent to develop the land; however, once the land was subdivided, it could be sold to someone who did intend to develop it. Mr. Dillon stated that he felt it would be setting a negative precedence to begin waiving proof of water requirements. Mr. Dillon added that there were four companies who would complete a test well for considerably less cost than a full well.

Mr. Rand stated that he was sympathetic to the owner's case because they were not getting the help they needed from their County Board member; however, Mr. Rand stated that he did not understand why the owners were having so much trouble locating a company to perform test well services for them especially since Mr. Braun had researched the issue and found four companies in the area that did so. Mr. Rand stated that perhaps the companies Mr. Braun reached out to gave him misinformation; regardless, there was only so much staff could do to help the owners in finding a company to provide the service. Mr. Rand asked if the test well requirement was part of a Special Use application process, and Ms. Urban responded that the ordinance required this as part of a Special Use application. Mr. Rand asked if the owners had the option of submitting an incomplete application and having the committee vote upon it, and Ms. Urban responded that Planning and Zoning would not accept an incomplete application. Mr. Elsasser stated that he was not advocating giving the owners a waiver from the requirement, he was advocating for a change in the policy to remove the requirement from the Special Use application process.

Mr. Dillon stated Planning and Zoning staff had already reached out to well companies and had found several that performed test well services. Mr. Dillon added that, at this point, a hardship was unproven because the owners had not talked to all the companies to find out if they could perform the service. Mr. Dillon stated that he would adamantly support the test well requirement in order to protect future buyers. Mr. Wilson stated that if they could dig a test well for a few thousand dollars, they would have no problem in doing so; however, the problem was that they were having a hard time locating a company to provide the service. Mr. Dillon advised Planning and Zoning staff to follow up with the Wilsons and the well companies to help find someone to provide the service.

**Adjournment:** Mr. Dillon adjourned the meeting at 4:26 p.m.

*Recorded by: Ellen Hanks, ZBA Administrative Assistant*