

**PLANNING AND DEVELOPMENT COMMITTEE**  
**McHenry County Government Center – Administration Building**  
**667 Ware Road – Conference Room A**  
**Woodstock, IL 60098**

MINUTES OF THURSDAY, SEPTEMBER 1, 2011

Chairman Hill called the Planning and Development Committee meeting to order at 8:33 a.m. The following members were present: Tina Hill, Chairman; Randy Donley; Mary Donner; Sue Draffkorn; Jim Heisler; Marc Munaretto and Ersel Schuster. Jim Heisler arrived at 8:45 a.m. Also in attendance: Peter Austin, County Administrator; Dennis Sandquist, Matt Hansel, Darrell Moore and Maryanne Wanaski, Planning and Development; Mary McCann, County Board; Zoning Board of Appeals members Richard Kelly, Linnea Kooistra, Vicki Gartner, Charles Eldredge, Elizabeth Scherer, Edward Haerter, John Rosene and Patricia Kennedy; Les Pollock, Arista Strungys and Roxanne Sosnowski from Camiros, Ltd., and interested public.

	Tina Hill, Chairman
Randy Donley	Mary L. Donner
Sue Draffkorn	Jim Heisler
Marc Munaretto	Ersel Schuster

MINUTE APPROVAL:

Committee members reviewed the Planning and Development Committee minutes of August 18, 2011. Ms. Donner made a motion, seconded by Ms. Draffkorn, to approve the minutes. The minutes were approved with a unanimous voice vote of all eyes.

PUBLIC COMMENT:

Julie Biel Claussen, Executive Director, McHenry County Housing Authority and ex-officio member of the McHenry County Housing Commission, addressed the committee and read a statement as follows: "The McHenry County Housing Commission participated in a stakeholder meeting with the consultants in connection with the Unified Development Ordinance in February. The consultants accurately summarized the concerns of the Housing Commission in the memorandum dated February 28, 2011. Some of these concerns addressed density bonuses for affordable housing development. These included current subdivision regulations contain a density bonus for affordable housing. The percentage of affordable housing required to qualify should be increased. One option is to create a sliding scale allowing developers to use the bonus that makes the most economic sense. Affordable housing bonuses should be tied to the land as a long-term regulation. Transit-oriented development should include affordable housing density bonuses. Mixed-use development should be encouraged as much as possible. The current subdivision ordinance allows for a 5% bonus for inclusion of affordable housing within a conservation design proposal. The consultants propose removing density bonuses from the conservation design. The consultants suggest using a Planned Development process for subdivision approval. The Technical Review Memorandum states, "In the PD process, there must be a give and take between the developer and the County within the proposal. PD requirements should define the types of amenities or elements desired in exchange for the flexibility and bonuses offered through the process." I suggest the UDO contain explicit density bonuses for inclusion of affordable housing within the new Planned Development process as proposed by the consultants.

Conor Brown, McHenry County Association of Realtors, addressed the Committee concerning the UDO. He previously provided County Board members with letters dated August 16 and September 1, 2011. He mentioned their organization has concerns with the direction that the technical review is going after hearing some of the comments that followed the P&D and ZBA joint meeting as it relates to development. There is a philosophy going on that is creating more restrictions and more barriers to development and not streamlining it so it can be more efficient and a less costly option for developments in the County. Part of the reason why the Conservation Design Ordinance was created was to assist developers to create more environmentally-friendly subdivisions. There is a requirement that some people are calling for and an example is an assured water supply which is a highly subjective requirement and he feels it is a very dangerous requirement if the County decides to pursue this. In his correspondence he included an issue related to non-conforming legal structures that was prepared by the Association's attorneys in Rockford when they dealt with this issue in the City of Rockford. He would argue that anytime a property owner loses their building due to something outside of their control, be it an act of God or arson, they should be able to rebuild the legal structure to its prior use. He feels there is a reasonable timeframe to do so and it goes with the property rights of the owner.

Rob Schaid, broker with ReMax Plaza in McHenry and Richmond, addressed the Committee concerning the UDO. He referenced page 7 of the UDO Technical Review Memorandum dated June 2011 which references an automatic sunset clause. He stated that this raises a few concerns, especially given the current market. Local restaurants and banquet halls may sit empty for a long period of time. The property owners take care of their property, but it can take longer than one year to remarket their property. He requested that the Committee extend the one-year time period for the sunset clause suggested in the UDO to three years. Concerning the contiguous ownership of lots mentioned on page 14 of the UDO Memo, Mr. Schaid mentioned that this was very common during the boom years when investors were looking for lots to purchase. Many were lots where a homeowner built a garage on an adjoining lot. When the homeowner attempts to sell their property in the future, they would receive more money if they sold the lot with the garage on it separately. The new builder would remove the garage, or be able to reuse the garage with a new home built on it. If they are forced to combine the lots at a later date, then they will not be able to separate them and sell them individually.

Dianne Ochesky, realtor and a member of the McHenry County Realtors Association, addressed the Committee concerning the UDO. Her concern is where the UDO Memo addresses equines and making them a separate district. She questioned how the Committee planned to do this when many of the equine facilities have agriculture on them, including hay and barns. She asked if they were going to look at the different uses of land on specific parcels, and if there would be a different type of taxation.

Tom Harding addressed the Committee and stated that the stormwater part of the ordinance is overdone and stated that we do not need more regulation, we need less. One of the stumbling blocks toward development in McHenry County and in the country is overregulation which is now a burden on a developer and we need less regulation, not more.

Nancy Schietzelt, Environmental Defenders of McHenry County, addressed the Committee concerning the UDO. She mentioned that she hopes the Committee, as they go through the process of working on the UDO, will keep all of McHenry County in mind. McHenry County is diverse in many ways and she hopes that the Committee will protect the common good in the County for everyone who lives here, far into the future. As they work and develop the UDO, she asked that the Committee consider keeping a healthy environment, a sustainable water supply that is of high quality, and to not walk over individual property rights. She hopes that the Committee considers the common good for everyone in keeping a sustainable environment for everyone far into the future.

Jim Heisler arrived at 8:45 a.m.

PRESENTATIONS: None.

SUBDIVISIONS: None.

OLD BUSINESS: None.

NEW BUSINESS: *Planning and Development Committee and Zoning Board of Appeals Joint Review of the Unified Development Ordinance (UDO) Technical Review Memo:* Members from the Zoning Board of Appeals (ZBA) joined Committee members to review the UDO Technical Review Memorandum (Memo) and provide Camiros with final direction before the UDO is drafted.

On page 4, Article 4 of the Memo (Application Process), there were prior questions concerning the timing of hearing notices. Ms. Strungys mentioned that the timing of public notice for a public hearing is determined by statute which states that it cannot be less than 15 days and no more than 30 days before a hearing. Ms. Schuster mentioned that it is important to have it clarified and noted in the UDO how the days are counted for public hearing notices. Mr. Kelly mentioned that when days are counted, every day of the week is counted, including Saturdays and Sundays.

On page 5 of the Memo concerning hearing processes, it was questioned how written comments will be addressed. Ms. Strungys stated that in the Memo they noted how they would describe the process. They will add language as to how written comments are addressed in the UDO. Ms. Sosnowski mentioned that written comments may be addressed during the public hearing process by being read into the record by staff. It is determined by the ZBA how they want to handle written comments. She mentioned that the ZBA needs to rely on the evidence presented by way of testimony at the hearing.

Concerning the "LaSalle/Sinclair Factors" located on page 6 in the Memo, it was questioned how these factors are used to evaluate whether to uphold a local zoning decision or not. A table of the standards for zoning amendments is located on page 7 of the Memo. Mr. Pollock mentioned that the LaSalle Factor is a consideration of the whole rather than the consideration of each individual item. The presumption is that every item needs to be proved. When the results of the testimony are given, the factors are generally proved. Mr. Sandquist mentioned that the current zoning ordinance uses both sets of standards, the LaSalle Factor for rezoning and for CUPs and the Ordinance states that you must meet all of the standards. The proposal from Camiros is to follow the court standard which is they have to meet the preponderance of the standards. Ms. Sosnowski mentioned that Camiros is suggesting following case law which is more of preponderance rather than a checklist. Mr. Pollock mentioned that there are unique situations with each conditional use. Mr. Rosene mentioned that they are hired to make judgments and weighing evidence and weighing preponderance of evidence in determining the individual conditions of a petition makes more sense than checking off items on a list to show whether items were covered or not. Mr. Kelly mentioned that the conditions are there to defend the ZBA on petitions that are turned down, not on the petitions that are approved. Mr. Munaretto mentioned that there should be consistency in the methodology and apply the same broad or narrow standards, depending on the petition.

Concerning the Standards for Zoning Amendments table on page 7, Ms. Strungys stated that it reflects the standards for the zoning amendments. Certain standards are applicable only for map amendments, while other standards are applicable for text amendments, or applicable for both. Ms. Scherer requested that Standard No. 2 be explained, which reads "The extent to which property values of the subject property are diminished by the existing zoning." Ms. Strungys mentioned that when a rezoning comes into place, this standard can be used in the evaluation. Ms. Kooistra requested an example as to how this standard would be implemented in a rural zoning change. Mr. Pollock stated that there is not an inherent value in property, but value of property is created by allowing development on the property. The basis of establishing value are the policies that the County sets for its land use and the County's 2010/2030 Plan sets the land use policy and that is where the zoning ordinance sets the values. This is the connection between regulation and policy.

A question was raised as to what development is going to be subject to a site plan review as referenced on page 9. Ms. Strungys mentioned that it is suggested to require any multi-family, townhouse development, and non-residential development over 20,000 sq. feet in area to come before a site plan review. She mentioned that these are common in most site plan reviews because they are more intensive developments. Chairman Hill questioned if there were any concerns by members present concerning how the process for site plan reviews will work. Ms. Kennedy stated that she feels it would be beneficial to include the County's stormwater engineer in the site plan review, along with a township highway commissioner. Mr. Sandquist stated that the site plan review could be a staff function under the existing staff plat committee. They are well suited to do this task and this is his recommendation. Mr. Munaretto mentioned that he does not support the P&D Committee having any role in what is traditionally a staff or committee function and he does not support the P&D Committee being involved in the site plan review. The township road commissioner may not have a role in the site plan review. Traditionally their role is more involved in the subdivision process where they evaluate the interconnection of roads and issues relating to roads. He also does not support having the County's stormwater engineer become a member of the site plan review committee because the County is already at a point where the cost administering the Watershed Development Ordinance has far exceeded the expectation of the County Board and this exasperates the problem. Mr. Pollock advised that the best situation is to have a review done by staff and the recommendations of the review be transmitted to the hearing body. Mr. Sandquist mentioned that a major portion of the subdivision review process, and a significant portion of the site plan review, involve stormwater management. The chief engineer spends time reviewing subdivisions, he attends the staff plat committee meetings, and he provides his recommendation to them. His perspective is to have the County's chief stormwater engineer be able to vote on site plan reviews. Ms. Sosnowski stated that there is a state regulation that is from the IEPA where any time a community in the State of Illinois where there are more than five acres of soil that are going to be disturbed, there are certain plans that have to be submitted to the IEPA. A stormwater management plan also has to be submitted and these are materials that are important to have the County's stormwater engineer be a part of. Mr. Munaretto questioned whether or not the engineer should have a voting privilege and he feels very strongly that this separates the engineer outside of the staff role. He does not support having the County's stormwater engineer become a voting member. Ms. Kooistra questioned how the strategic aquifer recharge areas will be included in the site review because stormwater is different than groundwater. Ms. Strungys mentioned that one of the proposals in the Memo, based on the Water Resources Action Plan (WRAP) was to create a SARA overlay district which would have certain standards that apply to everything located within the SARA map within the Plan. Those additional standards would come into play whether there is a site plan review or not. Ms. Schuster suggested that road commissioners be involved with site plan reviews from the beginning. Mr. Sandquist mentioned that the proposal is to allow the stormwater engineer have a vote on site plan reviews.

Concerning zoning map corrections located on page 10, it was questioned whether there needs to be a control mechanism for the recommendations stated. Mr. Munaretto mentioned that Camiros is establishing the standards that will allow an environment for map amendments to take place. Ms. Gartner stated that an administrator's ability to make map amendments would be invaluable. Mr. Moore mentioned that they have compiled a catalog of various places located in the County where there are discrepancies in the zoning map. It currently is a very involved process to amend a zoning map. Ms. Schuster stated that there needs to be a reporting mechanism for all corrections to zoning maps for future reference. It was the consensus of the Committee to include a simpler process for zoning map corrections that are administrative in nature. Ms. Sosnowski mentioned that she worked with Camiros on this issue and according to state statute, there is not a requirement that a matter go before the ZBA for simple map corrections that are scrivener's errors. She would recommend that property owners are notified of any changes.

With reference to nonconformity provision recommendations found on page 11, Chairman Hill questioned if members wanted a new zoning designation and standards for nonconforming lots and buildings. Ms. Strungys mentioned that they previously discussed with Committee members that a new zoning designation would be for small lots located along waterfronts located in the County. Their intent was to review what the current development standards are and possibly create a new zoning district. This would remove the lots from being nonconforming and make them conforming lots which would allow homeowners to alter or rebuild their homes on these lots. Mr. Eldredge stated that if they change a nonconforming lot to a conforming lot for someone who has a legal nonconforming use, they are substantially diminishing the value of the homeowner's property. Ms. Strungys stated that the intent is to create a zoning district for areas that would make the homes conforming. The goal is to document what the homes look like now and then build that into the standards for the new zoning district. Mr. Pollock said their intent is to create a district that would allow the nonconforming lots to exist and to be conforming to a new set of rules, assuming the rules are acceptable to the Committee. Ms. Schuster mentioned that she is concerned that a new zoning designation will eventually work its way into other areas of the County. As an example, more cottages could be built on small lots along rivers and lakes. She suggested identifying the nonconforming lots and do not create a new zoning designation that can be applied to every part of the County. Mr. Hansel mentioned that the best solution to some of the nonconforming lots was to create a historic district that could be overlaid in certain areas of the County. The County Board has to tightly restrict where the historic districts can be. Mr. Donley questioned if this would allow for more development because there are many empty lots that cannot be built on because of current standards. Ms. Strungys mentioned that there could be buildings placed on many of these lots. They would require a variance and the builder/owner would have to work with the current standards which are in place. Mr. Munaretto questioned why it would be negative to have vacant land along the river developed consistent with the existing buildings that surround it. This would add to the County's equalized assessed valuation and would enrich the County's ability to merchandise an area of the County which is wonderful, in his opinion, specifically the Fox River Valley. Ms. Gartner stated that this could expand into a type of zoning that they do not necessarily want to see in the County. Mr. Rosene mentioned that he agreed with Mr. Munaretto's point of view, other than if there were any environmental impacts from building along waterways. He feels owners of empty property along the areas mentioned should have the opportunity to build on the lots.

Chairman Hill asked Camiros representatives to provide a summary concerning built-in flexibility for nonconforming structures/lots mentioned on page 11. Ms. Strungys stated this addresses two common non-conforming structure/lot provisions. The first proposed built-in flexibility concerns nonconforming single-family structures where the sidewall of a home encroaches into the yard by a foot or so. In order to allow the owner to build an addition and expand the structure, built-in flexibility would allow the owner to build an addition without having to apply for a variation. This is proposed in order to allow residential owners to maintain, preserve and expand their homes. A second proposed built-in flexibility concerns existing lots of record where a portion of the lot is taken by the Department of Transportation for roadway expansion to allow them to be deemed as a conforming lot because it is not the owner's fault that part of their land was taken away for the roadway. This flexibility would work best with additions and expansions of existing nonconforming structures.

Concerning the proposed discontinuation or abandonment for an extension of time for nonconforming uses mentioned on page 12, Ms. Strungys stated that it is proposed that the process be tightened up so that the ultimate goal of eliminating nonconforming uses is still valid. Mr. Hansel mentioned that in the current ordinance, applicants write a letter stating that they are ceasing their nonconforming use for one year and then they are allowed an extension for their nonconforming use. Ms. Strungys stated that they recommend, under the new ordinance, to allow one year to maintain the

nonconforming status, but require tighter standards for timeframes for the extensions on a case-by-case basis. They also suggest limiting the number of extensions allowed to a maximum of two. Mr. Munaretto mentioned that no one can predict what the economy will be in the future, and he feels there are issues with respect to the landowner's right that they should be sensitive to. He feels they should be more permissive and not more restrictive. Mr. Eldredge mentioned that he feels they should allow the property owners to be able to keep the rights they have. Mr. Pollock stated that they would like to receive direction from members present to place provisions in the UDO that will restrict nonconforming uses. Ms. Schuster stated that she feels a one-year extension is acceptable, but also allow the owners the ability to apply for rezoning.

Chairman Hill asked Camiros representatives to provide a summary concerning the ownership of contiguous lots and deed restrictions mentioned on page 14. Ms. Strungys provided the following example: a property owner owns two contiguous lots and builds a home on one lot and a detached garage on the other lot and the owner wants to sell the lots. Camiros suggests regulations to ensure that new nonconforming lots are not created and one way would be to require property owners to deed restrict or consolidate the lots. The County can also create its own deed restriction form where the County can require notification if the deed restriction is removed from the property. The intent is to encourage the property owners to consolidate the two lots. Mr. Haerter questioned if homeowners know that they have nonconforming lots. Ms. Sosnowski mentioned that this information typically is provided at the time the properties are sold, or are attempted to be sold.

Ms. Donner left the meeting at 10:45 a.m.

On page 16, clarification was requested concerning standards for approval of a subdivision and it should be linked to subdivision standards. Ms. Strungys stated that an example would be standards that are directly linked to subdivisions. When there is a review and approval of a subdivision, staff would review subdivision standards. They are not reviewing the design of the building or the use of the property, but rather looking at how the lots are being laid out.

Page 17 refers to planned developments. Chairman Hill inquired as to what criteria shapes a planned development (PD). Ms. Strungys mentioned that they propose a PD be approved as a conditional use. They propose to allow a PD in all districts, except agricultural and industrial districts. In the PD process, there must be a give and take between the developer and the County within the proposal. A PD is usually approved as a conditional use, but the approval process is not that of a conditional use. There are additional steps that require County review and approval, along with offering opportunities for public input. There is a pre-application meeting with County staff; a concept plan must be submitted before submitting a formal application for a PD; the detailed preliminary plan is submitted following the concept plan; and then the final plan is submitted for review, which is then forwarded to the County Board for approval or denial. Mr. Haerter stated that he feels this would be beneficial to have in the UDO because it allows both the ZBA and County Board to design the criteria for planned developments. Ms. Strungys mentioned that planned development is a use within a use table and are to be used in commercial and residential areas.

Mr. Munaretto left the meeting at 10:55 a.m.

Chairman Hill questioned if planned development standards exceptions be tied to additional public benefits as noted in the second paragraph on page 18. Ms. Strungys mentioned that they have to look at the overall benefits that the project provides in determining this.

Chairman Hill requested clarification as to what Camiros means by the "modern generic use approach to address permitted and conditional uses within districts" mentioned on page 20. Ms. Strungys mentioned that the generic use approach is used instead of specifically listing every type of retail use. As an example, instead of listing book stores, shoes stores and record stores, you would list retail goods establishments instead. There would be a clear definition of retail goods establishments. This may help with nonconforming uses, as well. It provides a greater sense of flexibility by grouping specific uses together.

Page 21 mentioned a list of temporary uses with appropriate standards. Ms. Strungys mentioned that they added a list of a variety of temporary uses in Section 404.3 of the UDO. An example would be temporary storage containers (PODS). It would have to be determined how long the containers can be on a site, where they can be placed, how they can function, and that they cannot be used as a place to live.

With reference to various yard and bulk standards reviewed on pages 22 and 23, Mr. Strungys mentioned that three areas identified to date include the following: yards should be set as minimums and uncoupled from the building line; yards should be measured from building walls; and an impervious surface control should be added to the district regulations. Currently yards are measured from the building overhangs which may create easement situations based on the shape of the lot. Typically ordinances measure yards from the building wall.

Ms. Draffkorn left the meeting at 11:00 a.m.

Ms. Strungys stated that in addition to architectural features that may encroach, they recommend doing a comprehensive accessory structure section in the UDO. Swimming pools would have their own set of provisions, including setbacks from lot lines. Decks, porches, sheds, and provisions on enclosed and unenclosed porches and the distinctions between them will be outlined in this section, along with the standards for them. Mr. Haerter feels that setbacks should be maintained. Ms. Strungys mentioned that the intent is to maintain the integrity of the setback.

Page 22 references agricultural (AG) districts and mentions that the UDO should clearly define what qualifies as an agricultural use. Ms. Sosnowski mentioned that the definition included in the Memo is how agricultural purposes are written in the state statute. They also included some representative case law on the issue, and history of relevant Illinois Attorney General's opinions going back to the 1970s which has evolved the definition of what is included as AG purposes. She mentioned that they have not crafted the definition of agricultural uses because they are limited in this regard as to what is included in the state statute. She stated that they would not use any other definition of agricultural uses other than the one written in the state statute. Using the County Code, the interpretations from case law and the Attorney General, Camiros will prepare a definition for agricultural uses. Ms. Schuster suggested that they obtain a clear definition of what "Agri-business" is before they define agri-tourism. Mr. Kelly stated that the definition in the statute states that nurseries are a part of agriculture. Nursery businesses that obtain product from outside of their own property, as well as their property, should be exempt to have the storage of their equipment on their property, and other sites, similar to a farmer that harvests grain and stores their vehicles on other sites. Nurseries should be able to have the same exemption for their business similar to what area grain farmers do. He feels this should be addressed in the UDO instead of nurseries having to apply for conditional uses in order to store their equipment for their nurseries on other property. Mr. Hansel mentioned that if a nursery conducts any other type of business other than a nursery, they have to obtain a conditional use to operate a business on the property that is zoned agriculture.

Chairman Hill thanked the members of the ZBA for attending today's meeting.

Camiros representatives mentioned that they plan to provide a draft of the UDO within four months. Mr. Pollock mentioned that the most controversial issues at the present time are agricultural uses and creating zoning districts.

It was the consensus of the Committee to continue reviewing the UDO Memo with Camiros representatives, and members of the ZBA, during the Planning and Development Committee's meeting scheduled for October 6, 2011 at 8:30 a.m. There may be a future Committee of the Whole meeting to discuss the UDO.

REPORTS TO COMMITTEE:

*Community Metropolitan Agency for Planning (CMAP):* None.

*Community Development Block Grant (CDBG) Commission:* None.

*Historic Preservation Commission:* None.

*Housing Commission:* None.

MISCELLANEOUS: None.

EXECUTIVE SESSION: None.

ADJOURNMENT: Noting no further business, Mr. Heisler made a motion, seconded by Ms. Schuster, to adjourn the meeting at 11:40 a.m. The motion carried with a unanimous voice vote.

\* \* \* \* \*

**RECOMMENDED FOR BOARD/COMMITTEE ACTION:**

mh