

**Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
October 28, 2009**

Call to Order: Mel Gratton called the meeting to order at 7:00 p.m.

Roll Call Present:

Planning Commission:

- ✓ Melvin Gratton
- ✓ Susie Davis
- ✓ William Tonne
- ✓ Nick Tranel
- ✓ Dave Jansen

Staff & County Board Members:

- ✓ Steve Keeffer, Highway Engineer
- ✓ Sandra Nolan, JDC Health Dept.
Terry Kurt, State's Attorney
- ✓ Linda Delvaux, Building & Zoning
Ron Mapes, JDC Board Member
- ✓ Marvin Schultz, JDC Board Chair
- ✓ Merri Berlage, JDC Board Member

Approval of Minutes: A motion was made by Nick Tranel to accept the September 23, 2009 minutes. Seconded by Susie Davis Voice Vote: All Ayes

Mel Gratton swore in all who might want to testify on any request this evening.

Under unfinished business, Galena Cellars will be moved to the last item on the agenda.

New Business

James White, owner, requesting a Special Use Permit in the Ag-1 General Agricultural District to allow for a non-agricultural residence and a 1 lot subdivision. Common Location: West Cross Road, across the road from 11564 West Cross Road, Galena

Staff Report

- Comprehensive Plan: The Comprehensive Plan would indicate this parcel to be in the Agricultural Area. The Agricultural Area doesn't show any concentrated areas of important or prime farmland soils. This request is approximately 1 Mile from Galena's municipal boundary. The Comprehensive Plan would encourage development adjacent to or within a mile and a half of a municipality. This area has already seen development.
- Waste Treatment: Soil borings were completed on this property in May 2007 indicating that a conventional septic system could be installed. The system would require protection from high seasonal groundwater.
- Access Considerations: There is adequate sight distance if the entrance is located on the eastern side of the parcel.

- Other Considerations: A LESA was done and resulted in a score of 167. This parcel is adjacent to Wienen Estates, in close proximity to Deer Run Estates and within a mile and a half from the City of Galena. The City of Galena's Plan Area Proposed Land Use Map shows this area and would indicate it only as Ag, although their desired residential growth is directed into this general area. The area would lend itself to residential use, due to the existing subdivision in the immediate vicinity. An Eco Cat was done for the requested area. The report indicated the Keough Effigy Mounds, INAI (Illinois Natural Area Inventory) Site and the Keough Effigy Mounds Land and Water Reserve are in the general area. They are located off of North Cross Road on the Mississippi bluff area, approximately 1.5 miles to the southwest of the request. The City of Galena has responded to this request indicating they are waiving the opportunity to apply the City's subdivision regulations.

Cheryl White, PO Box 6054, Galena

- Asking for a 1 lot subdivision to build a home.

Gratton states they are requesting a special use permit for a non-ag residence in the Ag district with a 1 lot subdivision.

Public Testimony

Tom Richardson, 11943 West Red Gates Road, Galena

- Have rented the property being requested for the last 10 years, it will probably be an advantage to have a home site along there, will clean it up and appearance better. There is some soil that is pretty good out there; I would like to give you some soil samples that have been taken.
 - Gratton states that we do get the soils from the Soil and Water Conservation District and that is factored in to the LESA score.
 - Tom Richardson asks even the fertility of what it is capable of.
 - Gratton states that fertility can vary and depending on how much you want to spend on fertilizer. It does look like a relatively good piece of farm ground.
 - Tom Richardson states that it is some of the best out there. Where they want to put the house is probably the best spot of the 22 acres. Of the 310 acres that I farm that is the best farm land out there.

Public Testimony Closed

A motion was made by Dave Jansen to recommend approval of the special use permit and a 1 lot subdivision stating the following:

1. LESA score appropriate for development- 167
2. Sight distance available for access
3. Soils are suitable for septic system
4. Within 1 ½ miles of the City of Galena – No objection
5. Contiguous to existing residential development:

- i. Deer Run Estates
- ii. Wiene Estates

Seconded by William Tonne

Discussion:

- Gratton states that this is typical of requests and we need to look at special use standards
- Delvaux confirms if the subdivision is to be included in the motion.
- Jansen adds the 1 lot subdivision and Tonne confirms

Special Use Standards have been met.

Roll Call: Nick Tranel – Aye
 Susie Davis – Aye
 Dave Jansen – Aye
 Bill Tonne – Aye
 Mel Gratton - Aye

Mike & Beth Walter, owners, and Bridget Zurcher, petitioner, requesting a variance from the required lot frontage of one hundred fifty (150) feet at the road right-of-way, when separating a residence that lawfully existed as of March 1, 1995, from a larger lot, presented as a 1 lot subdivision. Common Address: 3027 West Veta Grande Road, Scales Mound

Staff Report

- Comprehensive Plan: The Comprehensive Plan does not address Variances.
- Wastewater treatment: The health department has no record of a septic system on this property. A permit was issued in 2004 for a septic tank replacement but the permit expired and no tank was installed or inspected.
- Access Considerations: The sight distance for the existing entrance is adequate in both directions.
- Other Considerations: Petitioner has requested a variance from the required lot frontage. This is an existing farm house built prior to 1995. Should a variance be granted, the existing residence will then qualify for a split under the following:

Existing Agricultural & Non Agricultural Residences – Residences on a lot created by the separation of the residence from a larger lot provided all of the following:

1. Residence lawfully existed as of March 1, 1995
2. Minimum Area – The parcel creates shall not be less than two (2) acres in size.
3. Minimum Width – A minimum width of one hundred fifty (150) feet shall be maintained at the road right-of-way.
4. All separation under this section shall comply with Illinois Law including but not limited to the Plat Act.

Since there is no lot frontage, an easement is required, so petitioner is required to draw this up as a 1 lot subdivision and must get approval as required by the Subdivision Ordinance. Should the subdivision be approved, applicant/petitioner must record the subdivision before it can be sold.

Bridget Zurcher, petitioner

- I am the daughter of Mike and Beth Walter as well as the petitioner for this request. We currently rent this house and would like to purchase this from them. The 150 feet of road frontage is a mile from the house, cannot get it.

- Gratton states that this would normally be taken care of through the office, but because it has no road frontage, you need to ask for a variance.
- Tonne asks about plowing
 - Bridget states my dad does it.
- Gratton states that there was a recorded easement and have access through that. Also you may want to have an agreement on who maintains the road.

Public Testimony

None

Public Testimony Closed

Discussion:

- Linda asks that you separate the variance and the 1 lot subdivision because only the subdivision will go on to County Board.

A motion was made by Nick Tranel to approve the variance request stating the following:

1. Location and distance from the main road

Seconded by Susie Davis

Discussion:

- Gratton states that the petitioner is not trying to seek any personal gain or impair anyone. This is also a unique situation.

Standard for variation have been met

Roll Call: Susie Davis – Aye
 Dave Jansen – Aye
 Bill Tonne – Aye
 Mel Gratton - Aye
 Nick Tranel – Aye

A motion was made by Nick Tranel to recommend approval of the 1 lot subdivision request.

Seconded by Dave Jansen

Roll Call: Dave Jansen – Aye
Bill Tonne – Aye
Mel Gratton - Aye
Nick Tranel – Aye
Susie Davis – Aye

Galena Cellars Inc., Scott M. Lawlor & Christine Lawlor-White, owners, requesting a Special Use Permit in the Ag-1 General Agricultural District to allow for the continuance of all existing uses, construction of a new building for the business use and for indoor and outdoor live music. Common Address: 4746 & 4826 North Ford Road, Scales Mound. This request was sent back to the Zoning Board from the October 13, 2009 County Board Meeting for further clarification of the Zoning Board recommendation.

- Gratton give background on what has been done up until this point. I think that the public hearing portion of the request was very lengthy. In moving forward with discussion tonight, we did ask the State’s Attorney about the need to open this for public hearing if we were to ask questions of the petitioner. The State’s Attorney indicated that the ZBA can ask questions of the petitioner without opening public comment. If new information was to be submitted, the opportunity would have to be afforded for rebuttal and cross examination that would then require opening public comment. I would like to move forward and ask petitioner questions to help clarify this request, if we get to the point where new information is presented then we will need to open the public hearing portion.
- Tonne asks if we are ok to proceed and open public comment if we haven’t published this again.
 - Linda Delvaux states that the State’s Attorney is aware that we have not republished this.
- Gratton states that if we do end up having to reopen the public hearing, we should then take the opportunity to continue and republish.
- Marvin Schultz states that the maker of the motion is here from the County Board and I believe that the motion was sent back with the reasons, but also to open it up for public testimony as well.
- Gratton asks Berlage if you would like to hear and open this up for public testimony.
 - Merri Berlage states there have been events that have happened since your zoning hearing that you should hear about
 - Gratton states that info needs to be under oath.
- Tonne states that the motion did need clarifying, but it was two and a half hours of testimony and two hours was from the public. The issue of events characterized in that two hours covered the full gamut of events. I don’t know what events you are talking about, but we had impression about a lot of different events. I don’t know if what happened in the last month might be any different that the sense we had. If we open this up we will have to carry to another meeting, I don’t know if that will change anything in the intent of our motion, we do hope to be clearer.
- Gratton states that we need to look at how this was sent back to us and that does require further public testimony, we can start tonight, but the issue of republishing still needs to be determined.
 - Linda Delvaux states that Terry Kurt needs to answer that question.

- Gratton asks Bob Roth and Mr. Lawlor if they want to continue.
- Bob Roth states that he wrote a letter to Linda yesterday stating that I feel it is your prerogative whether to open this for another public hearing, but if that is your intention then we ask for a continuance, because you are not giving us due process to know that it is a public hearing and get our witnesses here.
 - Gratton asks if you have new evidence that you will be presenting.
 - Bob Roth states that if you open the public hearing I am confident that we will have new evidence, but if you don't open it we are satisfied with that, because we do not feel there is any ambiguity in the motion.
- Berlage states that in my motion I asked for the public hearing to be reopened.
- Gratton states then we will need to open this for additional public testimony and I understand that the petitioner would like to ask for a continuance. Correct?
 - Bob Roth states that is correct.
- Gratton states that we would then need to republish the request
 - Linda Delvaux states that I would clarify that with the State's Attorney and ask that my office be given enough time to take care of that issue.
 - Gratton states we will let Linda research that and if republishing is required then it will need to continue to a time when proper notice can be given; if no republishing is required, we will continue to the next monthly meeting.
 - Bob Roth states that we have a conflict for November, applicant will not be available. Scott Lawlor states that I will be here but I am accepting an award from the Chamber of Commerce that evening.
 - Gratton states that we will continue to December and that will give ample time to republish if necessary.

A motion was made by Susie Davis to grant a continuance till December 23, 2009 with Linda Delvaux checking to see if this needs to be republished or not.

Seconded by Bill Tonne

Roll Call: Bill Tonne – Aye
 Mel Gratton - Aye
 Nick Tranel – Aye
 Susie Davis – Aye
 Dave Jansen – Aye

Reports and Comments:

Ron Lawfer had questions regarding the Conservation District and land use. Discussion followed.

Nick Tranel made a motion to adjourn at 8:06 PM. Susie Davis seconded. Voice Vote: All Ayes