Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
April 26, 2006

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

Roll Call Present:

Planning Commission:

- ✓ Melvin Gratton
- ✓ Susie Davis
- ✓ Tom Heidenreich
- ✓ William Tonne
- Nick Tranel
- ✓ Dave Jansen (Alternate)

Staff & County Board Members:

- ✓ Steve Keeffer, Highway Engineer
- ✓ Heather Miller, Environmental Health
- ✓ Terry Kurt, State's Attorney
- ✓ Linda Delvaux, Building & Zoning
- Ron Mapes, Jo Daviess County Board Member
- ✓ Marvin Shultz, Jo Daviess County Board Member

Approval of Minutes: A motion was made by Tom Heidenreich to accept the March 22, 2006 minutes Seconded by Susie Davis Voice Vote: All Ayes

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

Unfinished Business

Galena State Bank & Trust Company as Trustee under Trust No 586 (Marvin Hartz), owner, requesting a supplemental special use permit to allow for the substantial expansion of Eagle Ridge Realty. Common Address: 5148 US Highway 20 West, Galena

Dave Jansen abstains from the request

Mel states that we have requested items and they have provided that information to us.

Linda states that at the time of construction the building would have to meet the current Building Codes.

John Cox, Lawyer representing owner

- Asks if there is a quorum for the vote
    - Mel states that we have three members of a five member board and that would be a quorum
- John asks about the three acre limit for the property Article 6 Section 6.4 C Commercial – Three acres.

Bill Tonne present at 7:15 pm

- This is an existing approved special use in the RP Planned Residential District. There was concern from the board last meeting and did want to hear from the State's Attorney.
    - Terry Kurt, State's Attorney, states that he was looking at Article 6 Section 6.3 C *Commercial Uses – Neighborhood commercial centers, signed principally for the convenience of the residents of the neighborhood in which they are located, shall be permitted as a special use on lots not less than three acres in area, and shall be allowed on-premises signs as regulated by Article X.*
      In my opinion that section would apply if you do decide that the intended use is a neighborhood commercial center. This is now back in front of the commission because they are substantially increasing the special use. I do not think that we should go back to 1996 when the plan was approved.
- Mel states that we do not want to go back to 1996 when the plan was approved, but we do need some history from the request. This building and use was in place prior to 1995. In 1996 Longhollow went through the process and this property was included in that whole process.
    - Terry states that this is not a clear opinion and you need to find if this is a neighborhood center or not.
- Mel asks if this property was not zoned RP, how would you look at this request today.
    - Linda states that I would consider this to be a non-conforming use in an Ag District, which would have a different set of standards.
    - John refers to Chestnut Mountain case and states that this request is not a non-conforming use.
    - Terry states that Chestnut Mountain is a non-conforming use and this request is a conforming use.
- John refers to Article 13 Section 13.9 D Standards (6) states *that the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Planning Commission*. In order to have approved this initially in 1996, the owner making the request could have expanded this acreage to meet the requirement because he owned the 33 acres. I think this acreage was initially dealt with at the approval of the development. Does the change bring that we are requesting bring up the issue of the three acres.
- Terry Kurt thought the uses were being increased from the initial approval date in 1996
    - John Cox states there were more uses in the structure then than what we are requesting now.
- Bill asks if this is totally reconsidered or is it only certain aspects of the request.
    - Terry Kurt states that you go back and look at the whole ordinance based on what is presented.
- John asks if the original special use is on the line tonight then I need to talk with my client.

        - Terry states that we are not considering the original special use, because you can operate as is, but we are looking at the changes.
- Jim Cox talked about the landscaping plan and the trees that will be removed and what they will be replaced with. We marked, measured, and identified each tree. We initially thought about 13 to 15 trees to be removed, but the landscaper thought for the health of the trees and a better replacement plan to take out 26 trees and replace with three different types of trees to shield in a different way. Twenty six trees amount to about 35% of the trees to be removed leaving about 65-70% to remain. With adding in the new plantings we will have about 80-85% of the numbers that are already there.
- Adam Johnson talks about the relation of the trees to the lot. The trees on the site are very important, so how we set the level of the new building on the lot and how that will affect the trees. The building has to be setback behind the existing building. The new building will be lower than the existing building. Trees along Longhollow Road will remain; existing driveway off Longhollow Road will remain and work with the existing slopes and driveway. From Longhollow Point we will be planting trees to shield that area. The building currently is two stories and we are proposing a single story building.
- Jim Cox has photos of the site from different views and other buildings in the area that also removed trees on their building site for construction. There are trees on there property, but we will be adding screening to that side of the lot.
- Adam Johnson states that the current building sits higher and all the water drains away, by bringing this building down we are creating a bowl affect to capture all the drainage and bring it to the detention pond. We are keeping all the water on our property.
- John Cox refers to Article 13 Section 13.7 C (4) *Adversely affect rare or irreplaceable natural resources.* Adam Johnson states that Jim Cox has been concerned with the reaction of everyone on what the building will look like and the site. We want to maintain the view and the screening and the design considerations of the neighboring associations.
- Jim Cox has an artist rendering of the site location.
- Closing information after public testimony: covers the special use standards, the Highway 20 access will be closed and will not be a safety issue anymore, property owners have stated that this will improve the view of the corner, we are not changing the use, the information requested at the last meeting was submitted, the last standard is the hardest because we do not have the three acre limit, but this will improve the site, some screening between the request and the longhollow building will be addresses. The profile of the building is reduced; the grade of the site will be reduced and will enhance the site. The existing building is deteriorating. We are not putting in a Subway store, the footage within the building is about 325 square feet for a small coffee shop to provide for the realty office, other businesses in the building, Longhollow Point and people of Galena Territory. There are multiple entrances to the building and the coffee shop is very minimal within the building.

Public Testimony

<u>Tom Nack, Lawyer representing Eagle Ridge Inn & Resort</u>

- Refer to Article 14 Section 14.4 Existing Special Uses Exempt (1). Is this proposal allowed under the special use Article 13 Section 13.9 D Standards (6)? Talks about the mandatory language of the word shall and that they can not alter those mandatory words. Refers to Article 6 Section 6.3 C Commercial Uses and 6.4 C Commercial – *Three acres* and this requires three acres and you can not alter that. Talks about the existing acreage of the lot. The parcel is about 2.57 acres and should not include right of way and the property across the road which would

result in about 1.25 to 1.5 acres when excluding the previous. This area would be the developed area. Refers to Article 15 Section 15.1 B (3) *The words "shall" and "will" are mandatory and not discretionary* and Article 15 Section 15.1 B (4) *The word "may" is permissive.* I don't think you can alter the three acre limit. Talks about Article 12 Section 12.15 B Overlapping or Contradictory Regulations *where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this Ordinance, the regulations which are more restrictive shall govern* and I do believe that the more restrictive three acres applies to this request.

- John Cox asks Tom where he got the numbers for the square footages on the property.
    - Tom states that those numbers were given at the last meeting and also talked with the Zoning Officer about those numbers. Those numbers were approximate and not exact.
- John asks if he knows if the acreage on the lot includes the roadway
    - Tom states that I do not know if the lot includes the roadway.
- John Cox states that I would think Article 14 Non-Conformities Section 14.4 Existing Special Uses Exempt does not apply because this is not a non-conforming use.
    - Linda states that this project was prior to zoning, but when they went through the process in 1996, the site plan was approved showing the development and indicated property lines for Eagle Ridge Realty and Longhollow Building 1. The site plan, the RP District and the special uses were approved at that time.
    - Tom Nack questions was there another area designated for the commercial uses within the Longhollow Point development.
    - Linda states there is another area within this RP District for commercial uses.
- Tom states that I do think that this ordinance requires that now there is a substantial expansion that we take the entire ordinance into consideration.
    - Mel states that we are in agreement that the request does constitute a substantial expansion.

<u>Chuck Schmidt, 443 Glendale Road, Roselle & own Longhollow Point Unit 1310</u>

- When the request was approved in 1996, went and got a copy of the site plan and it shows that there are 14 parking spaces for the Eagle Ridge Realty is because that building was to be torn down and the commercial was to be on the lower part of the property.
- I have an email to submit from Jim Conlin stating he thought the building was to be torn down and a park area was to be located there.
- The Longhollow Point also has an association created and they are filed with the State of Illinois. This shows that you are changing the rules for the parking area to increase and not become a park.
    - Bill asks Linda if the tear down of the building is part of the record
    - Linda reviewed the minutes and finding of fact from 1996 and found nothing about tearing down the Eagle Ridge Realty building.
- Submitted the covenants of Longhollow Point condominiums
    - Linda states that the Building and Zoning Office does not enforce private covenants and restrictions.
    - Terry states that I do not see the relevance of the email from Jim Conlin or the Covenants and Restrictions of Longhollow Point. The Planning Commission is not obligated to enforce or recognize the homeowner's covenants and restrictions.

Charles Asp, 4 Powderhorn Gap, Galena Territory

- Drive by this request at least two to three times a day and I am in favor of this request. I think it is a benefit to the corner; they are taking down an old building and replacing with a new modern building. This would be an attraction to the corner.

Linda Connor, 18 Butternut, Galena Territory and owner of Amber Creek Rentals

- My current business is located in the existing building and Jim has taken many things into consideration, such as property owners and what they are wanting. Jim has tried to make sure the building is beautiful, functional, and not take out any more trees than necessary and has complied with what the Planning Commission has requested.

Marty Johnson, 28 Vista Ridge Drive, Galena Territory

- As an owner of over 20% of the adjacent property to the request I still object to the project. I see this as a land use issue and not architectural aesthetics. I think also that history is in order because when I brought this request in 1994 this corner was seen as a sensitive visual screen for a very large structure. In 1996, we addressed 14 issues which were agreed on and one of the items was that the commercial was set down on the lower part of the property and have a 100 foot setback for all new structures. I think more trees will come down than 26 trees because of the retention pond and building the new building. The usage in the building was indicated as being less than what is in the old building, but I disagree because previously there was a builder, rental agency and real estate. We are adding a food/subway shop to the site. My outcome here is to not stop the building, but to create a less impacted development in this area. Have not talked with petitioner about my concerns. Makes suggestion of rebuilding in the same footprint then the driveway around the whole building would not be needed if they don't do a drive up window and would not lose many trees.
    - John Cox asks if Marty is in agreement with what Adam Johnson states previously about the site lines and scenic view, lowering of the building and maintenance.
        - Can't disagree with some of Adam Johnson's presentation.
    - Marty states that we have a screen of mature oak trees that screen for an 80,000 square foot building. The placement of the Longhollow building was here to keep the trees to screen the roofline of the building.
    - John asks if as an architect that the remaining trees that will be there, the lowering of the building, and the replacement of the additional trees, is endangering or harming from the scenic view in that area.
    - Marty states that he thinks that will happen because if you take down the trees you will be able to see the building and that is not what I want, I want to screen the Longhollow building.

Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: This special use commercial entity is a part of the Longhollow Planned Residential Development and is adjacent to the Galena Territory. The Comprehensive would support planned developments and the supporting uses.
- Waste Treatment: Building will be connected to central sewer. A private well currently serves the office. The café will require a food establishment permit and annual water testing.
- Access Considerations: Access will be off of Guilford Township maintained Longhollow Road. The current access has adequate sight distance. IDOT has indicated that the current highway 20 access will have to be removed.
- Other considerations: The existing building to be replaced currently houses Eagle Ridge Realty and Amber Creek Rentals, and has traditionally been used in this fashion. The requested use will be adding a small retail coffee shop, which will act in a supporting manner to the offices and to the surrounding Longhollow development.
- Design Considerations: With the entrance to the Galena Territory and the Longhollow development both being adjacent, attention should be paid to ensure runoff doesn't become an issue due to the increased impervious surface. Petitioner has indicted they will replant trees since they will lose some during construction. An erosion control plan should be adhered to during construction. Any additional lighting should be directed down so as to eliminate any unnecessary illumination of the area. The Zoning Ordinance will require 3 parking spaces for every 1000 square feet of floor area. This project is approximately 5000 square feet of floor area and will need at least 15 parking spaces provided. As with all projects disturbing an acre or more, an NPDES permit must be procured from the E.P.A.

- Mel asks Terry if this is a lawful special use with the existing use
    - Terry states that you decided it was a lawful use at the approval of the request in 1996.
- John this is not a non-conforming use.
- Bill ask how much will the building roofline be lowered.
    - Adam Johnson states that the main level will be about 4 feet lower and the roofline will be lowered about 12 feet.
    - Marty states that I have no problem with the architect of the new building, but with the view after the mature trees are out on Longhollow Point.
- Bill asks about the detention area.
    - Marty states that you will lose more trees in that area where the detention area is because of the stress on the trees and the changes
    - John Cox states that we have an expert in the area of landscaping and they state that will not happen to the trees.
    - Marty Johnson requests that if they think they will not be affected then I would like to see a bond in place if they were lost then additional trees would need to be planted.
    - John Cox states that they are willing to do a bond that if additional trees are removed due to the detention pond they would replace them.
- Bill asks about the setback of 75 feet.

    - Linda states that setback is from the property line. I could not find in the minutes of the initial request of the extra setback of 100 feet requirement or the 14 points Marty Johnson was referring to.
    - Marty states that I have that in my files, but not here tonight.
    - John Cox asks Marty if the scenic view at that location would be better with the current building left there.
    - Marty agrees with that statement and keeping the 26 trees is better.
    - Susie does not agree with the statement if they did impose the 100 foot setback of any new building.
    - Mel states that I think for any new building not including this one if we did impose the 100 foot setback would be because it would require a turn lane on the roadway.
- Bill asks about the uses that are there now.
    - John states there is a realty office and Amber Creek Rentals. There is additional room for a builder and a small coffee café. The room for the builder was there initially in 1996 and a previous Amber Creek Rental.
- Tom asks about signage. Will there be any on the building.
    - Jim states that we will conform to the Zoning Ordinance and will incorporate all the uses into one sign. None on the building that we are planning.
    - Linda states that what they proposed conforms to the Zoning Ordinance.
- Bill asks is there an option of downsizing.
    - John states that if you are going to spend the money to do a building to continue the use that you already have then why not make it functional.
- Mel states we need to look at reality and we know businesses grow and need that room. If we deny this we need to look at what will happen to the site, the building will deteriorate more and may come down, but can't guarantee that. This is a special use that was approved undersized. We need to work with the petitioner to improve the properties. This is a sensitive site for scenic views. The screening is being provided for the Eagle Ridge building and not the Longhollow Point building. These are mature hardwood trees and they do not live forever and it may be beneficial to take them down and plant new.
- Tom likes the plan for different types of trees and we need to look at the use of the land and the best use of that. The realty office has been here prior to zoning, adding the room for a builder goes with the use and adding the small coffee café is very minimal.
- Bill states that this does increase the use on the property some, but are 15 parking spaces enough. Questions why the drive goes all the way around the building. Does the basement impact the number of parking spaces at all? We sure hope for growth in real estate sales and construction has been a big part of our economy.
    - Linda states it meets the requirements of the Zoning Ordinance. Storage or basement does not impact the number of parking spaces
- Susie thinks this will be a good plan and improvement on what is there already.
- Discussion on the hours of operation of the coffee shop.
- Discussed standards and they meet the requirement from the documents submitted, elimination of the Highway 20 entrance, and will be an enhancement on the properties.

A motion was made by Mel Gratton to approve the request with the following conditions

1. Erosion Control Plan
2. Landscaping Plan
3. Signage as presented with downward lighting using full cut off downward projected lighting.
4. Hours of Operation for the coffee shop: 6:00 am to 10:00 pm

Seconded by Tom Heidenreich

Mel Gratton read the standards from the County Zoning Ordinance that need to be addressed.

Standards – No special use shall be recommended for approval by the Planning Commission unless the Commission shall find:

(1) The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare

The request does not endanger the public health, safety, morals, comfort or general welfare due to the closing of the Highway 20 entrance; Standard Met

(2) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or substantially diminish and impair values within the neighborhood

This use will not diminish the enjoyment of the properties in the immediate vicinity or temporarily impair the values with the neighborhood; Standard Met

(3) That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district

Development will not be effected; Standard Met

(4) That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided

The property will have adequate parking, access, and drainage; Standard Met

(5) That adequate measures have been or will be taken to provide ingress and egress designated to minimize traffic congestion in public streets

Ingress, egress will be adequately provided; Standard Met

(6) The special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Planning Commission.

Conforms to the applicable regulations of the district; Standard Met

Roll Call: Dave Jansen – Abstain
Susie Davis – Aye
Tom Heidenreich – Aye
Bill Tonne – Aye
Mel Gratton – Aye

New Business

Gregory Lincoln, owner, requesting vacation and replat of Lot 56, Coursens Landing 2nd North Subdivision. Current Zoning: RP Planned Residential District. Common Address: Lot 56, Cruiser Drive, Coursens Landing 2nd North Subdivision, Galena

Gregory Lincoln, owner

- Soil borings were done and we would need to install a sand filter system to avoid any complications with the project. This would make a more build able site and less expensive.
- The entrance will be the existing access road to the site.

Public Testimony

Steve Schmidt, MSA Professional Services, surveyor for the owner

- Taking a bad situation and making it not so bad. Could have gotten a building permit, but would have had to add deed restrictions on Lot 56, but this was the easiest way. Talks about how the parcels were created in this area.

Gordy Coursen, developer of Coursen's Subdivision

- Owner talked with him and would have had to request a variance for the setback, but then as long as he found a way to meet the setbacks and septic requirements I am okay with it.

Public Testimony Closed

Discussion:

Staff Report

- This request is to vacate the existing lot lines of Lot 56 & part of parcel A of Coursen's Landing 2nd North Subdivision and part of parcel 1 of Al Jacobs, to create one buildable parcel. By vacating and redrawing the lines the buildable lot area will be increased. The existing Lot 56 is a legal residential lot, but, due to the topography, soils, and bottomland/wetland area, it would be difficult at best to build on. By redrawing the lines this creates a larger area for septic and a somewhat better area for house placement. This will also clean up a couple of out lots in the area and create a cleaner subdivision line.

    - Waste Treatment: No soils on file for lot #56, according to the County Soil Survey, this lot consist of predominant soils prone to flooding (flooding and wetness issues). (Petitioner has indicated they will be doing soil boring 4/22/2006)
    - Access Considerations: Access will be from an existing Menominee Township road. The proposed access point was not delineated in the field, but it does appear that there is adequate sight distance for a driveway to be located within the lot frontage.
- Mel states they are taking a problematic property and making it less problematic
- Bill asks about the septic sand filter system
- Mel asks if they reviewed the information from Natural Resource Inventory Report because there are suggestions in there that could be beneficial.
- Heather states he will meet the requirement for a septic system

A motion was made by Dave Jansen to approve the request

Seconded by Tom Heidenreich

Roll Call: Susie Davis – Aye
Tom Heidenreich – Aye
Bill Tonne – Aye
Mel Gratton – Aye
Dave Jansen – Aye

Barron Petraitis, owner, requesting rezoning from Ag-1 General Agriculture District to R-1 Rural Residential District. Common Location: North Council Hill, Galena

Barron Petraitis, owner

- Received an entrance permit from John Schonhoff. The house will be on the west side of the lot.

Public Testimony
None
Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: The Comprehensive Plan would indicate this parcel to be in the Agriculture Preservation area 2, which would indicate concentrated areas of important farmland soils. Galena's Comprehensive Plan, Plan area proposed land use map #15 (attached) indicates they would like to see a strip along both sides of N. Council Hill Road preserved as greenspace and the remainder of the requested parcel is shown as a proposed use of Ag.
- Waste Treatment: No soil borings completed on the proposed parcel. Soil survey indicates an area of suitable soil for a conventional septic system on the west side of the lot. Soil on the rest of the lot is not suitable for a conventional system, either shallow to bedrock or bottomland soil subject to flooding. House placement will dictate the type of septic system.

    - Access Considerations: This parcel will be accessed from County maintained Council Hill Road. The access will have to be located at the north end of the frontage to provide adequate sight distance. There is a significant waterway that will have to be crossed to access the vast majority of the parcel. This stream crossing should be sized properly to avoid excessive back water, which could be problematic to upstream property, and Council Hill Road.
    - Other Considerations: A LESA was done and resulted in a score of 140. This parcel is approximately .7 of a mile from the municipal boundaries of Galena and has both Ag and residential surrounding uses. This property has been part of the parcel to the south and was just recently split off. Just south and adjacent to the parent parcel is an existing Bed & Breakfast.
- Linda states that the City of Galena gave a verbal and didn't appear to have any issues.
- Steve suggest whatever they put in for the crossing they need to make sure the water does not back up so it does not affect Council Hill Road. I think they need to have an engineer calculate the size of the tube that is required.
- Mel asks if they reviewed the information from Natural Resource Inventory Report because there are suggestions in there that could be beneficial.

A motion was made by Bill Tonne to approve the request stating the following:

1. Request is .7 miles from City of Galena
2. LESA score of 140

With the following conditions:

1. Engineered drawing of the culvert size required for crossing the waterway
2. Location of the driveway entrance by County Engineer

Seconded by Tom Heidenreich

Roll Call: Tom Heidenreich – Aye
Bill Tonne – Aye
Mel Gratton – Aye
Dave Jansen – Aye
Susie Davis – Aye

Bill & Sue Hubbard, owners, requesting rezoning from Ag-1 General Agriculture District to R-1 Rural Residential District. Common Location: Longhollow Road, Galena

Bill Hubbard, owner

- Would like the property to be rezoned
- Would like to put this home into the rental program
- Road commissioner will remove brush along the road way to get better site distance
- Intend on going into the property and removing dangerous trees.

Public Testimony

Jim Crossley, 4720 W Longhollow Road

- Questions about the home and concerns with the rental, power lines, septic, setbacks from the roadway. If they rezone the whole parcel could there be further development on the property. As I travel up Longhollow Road and try and turn into my property there is a blind spot and could be a safety issue.

Candice Crossley, 4720 W Longhollow Road

- Removal of the timber and trees would not benefit the area and the added traffic on the road

Arnold Ortscheid, 4591 W Longhollow Road

- Why zone 12 acres to build one house? How many bedrooms are you planning in the house?
    - Bill Hubbard states eight bedrooms.
- This would be more like a commercial use with that number of bedrooms and where are you getting the appropriate septic size. Only rezone a couple of acres for them to build on.

Bill Oldenburg, representing daughter and her husband James & Angela Young, adjoining landowners

- Understand that he will be renting out the property or is this for his family.
    - Bill Hubbard states that I will be trying to get a rental license if this passes.
- Why is this being rezoned from agriculture to residential? What will stop him from building more?
    - Linda states that if the 12 acres should be rezoned to residential then there is the ability to split the property in half and have a home on each property. If he meets the standards for rental, then the owner can rent them out for transient rental. If petitioner wanted to create a parcel less than five acres in size then the State Plat Act and the Counties Subdivision Ordinance would be triggered; that would keep this from becoming anymore than two parcels without another hearing process.

Jim Crossley

- Once the zoning is changed it will trigger the rental. I am under the impression that no home in the Galena Territory can be built with eight bedrooms. They are contiguous to the Galena Territory, but not in the Galena Territory.

Candice Crossley

- We know that they may only have a certain occupancy, but we know they over occupy the homes. We are concerned with the noise, traffic, and the lights because of the over occupancy.

Arnold Ortscheid

- You are putting a lot of traffic on Longhollow Road and I suggest that we get lights at night at the intersection there because many people are traveling and it is hard to see the turn.

Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: The Comprehensive Plan would indicate this parcel to be in the Agriculture area, which would indicate only small areas of important farmland soils.
- Waste Treatment: Soil borings completed for the 12 acre parcel. Suitable soil for a conventional septic system was located. Expansion / replacement room available on the lot. Lot will be served by central water through Utilities Inc. from The Galena Territory.
- Access Considerations: Access is proposed from Longhollow Road. A field review revealed that the best location for a driveway to achieve maximum sight distance would be very close to the overhead power lines that traverse the parcel. At this point, sight distance is 400 feet to the east which is adequate for the posted 35 mph speed zone. Additional sight distance could be provided with significant tree trimming.
- Other Considerations: A LESA was done and resulted in a score of 115. This parcel is adjacent to the Galena Territory and has both Ag and residential surrounding uses. This property has been a 12 acre parcel since at least 1989. Currently this parcel is mostly all timber

- Bill states that he can not build a house currently.
    - Linda states this parcel was in existence in the same meets and bounds description as it is today prior to the adoption of zoning therefore he could build a non-agriculture residence, but could he put it into rental, no he could not.
- Bill asks if he would get this rezoned and try for rental administratively does he trigger anything at eight bedrooms.
    - Linda states nothing would be triggered. He will have a maximum occupancy of 12.
- Residential, Agriculture and RP surround this parcel, concern of property values being diminished is not-conclusive, safety, morals, or general welfare are not-conclusive, relative gain to public compared to hardship imposed upon individual property owner is not-conclusive, LESA score of 115 and the LESA score doesn't indicated ag preservation, the property has been vacant since 1989, there is a community need for the proposed use, the request complies with county plan.
- Dave asks about where the speed limit starts.
    - Steve states that it may be at the township line then all the way to Highway 20. This is a legal speed limit. I measured the driveway site distance from the power line clearing. The site distance is right at the 400 feet requirement and if they cut back the brush a little more they would have more site distance.
- Mel asks about the access and should we restrict it to one.
    - Bill Hubbard states the road commissioner will only allow one road entrance.

A motion was made by Tom Heidenreich to approve the request stating the following:

1. LESA score of 115
2. Surrounding RP District land use and the trend of development in the area

Seconded by Bill Tonne

Roll Call: Tom Heidenreich – Aye
Bill Tonne – Aye
Mel Gratton – Aye
Dave Jansen – Aye
Susie Davis – Aye

Jon & Molly Kreiss, owners, requesting a Special Use Permit to allow for a single-family home to be used for transient rental. Current Zoning: R-P Planned Residential District. Common Address: 1 Oakmont (ER 3 Lot 4), Galena Territory

Scott Berndtson, Lawyer representing owner

- Concerns on previous requests were standards 1, 2, & 3.
- The main outdoor activity is completely enclosed and the 50 foot recommendation for outside activity areas to the neighboring lot line is eliminated toward the Mr. Olmstead property to the north east side. The property to the southwest is owned by Jon & Molly Kreiss. The three properties across the greenspace to the rear are already rentals.
- Paul Brashaw is here to contest to the setback on the north east side which is 15.6 feet.
- The three issues are the use and enjoyment of the property to the northeast due to the close proximity of the footprint to the house, the trend of development in the area is this residential or more of a rental area. This property is on central sewer.
- In the packet are affidavits that the neighboring property owner has no objection to the request becoming rental and Scott reads portion of the conversation with Mr. Olmstead.
- Terry Heim, real estate agent for 30+ years, submits an affidavit that no real or substantial detriment to the neighboring properties either financially or the enjoyment of the property if this property were to have a rental license.
- Mike Doyle, appraiser, submits an affidavit of the value of the home with and without the license and the neighboring properties how they are affected. Having a rental license increases the value of the home. The values of the neighboring properties have risen since 2003 as well. Mike states that the home since 2003 not having a rental license lost approximately $32,000 of rental income a year.
- Scott covers the photographs in the packet. These pictures are different views of the property. Refers to the first three standards and the pictures show they are meeting the standards.
- The site plan does show an area of a concrete patio to the south west property line which would not meet the required setback, but the ownership of the neighboring property has changed. They are willing to tear out a part of the area if they have to. The patio is concealed back into the woods and would not create a noise issue.
- The setback is only a concern on outdoor activity area on the south west property line. The approval of the six bedroom request behind this property shows a far greater interference than this request and should have been a concern.
- The impairment of the adjoining property is not visible, now the property values are actually increasing in the area. The average use of the lot space per footprint in the Augusta area is approximately 11.9%; 1 Oakmont Court area is 9.6%. The development in the area is rental and the approval of the six bedroom request to the rear confirms that. The other three properties to the rear have concerns such as exposed outdoor activity area, up on the hill where sound will carry, they have no buffers or they are not on septic and not sewer.

- I do not think this special use permit will endanger public health or the use and enjoyment of the neighboring properties. The denial again of the permitted special use must bear a real and substantial relation to the public health or general welfare. Refers to the case of Cosmopolitan National Bank v. Village of Niles in the case of a restaurant.
- Now that the concerns of 2003 have been eliminated or, conditions exist to more favorably treat the request, applicant sincerely request that the commission make a finding in favor of granting them special use permit for the rental of 1 Oakmont Court.
- Request was made for additional information, but not in a timely manner to include in this packet and if that information could be made part of the record for this request.
    - Linda stated Monday we received a Freedom of Information Request for additional information.
- Paul states that the patio that is colored and stamp would be a shame if that were to be torn out. To the side lot line from the patio would be about 13 feet to Lot 5.

Public Testimony

None

Public Testimony Closed

Discussion:

- Comprehensive Plan: Although the Comprehensive Plan does not address transient rental directly it does support tourism.
- Waste Treatment: This house is served by central sewer.
- Access Considerations: Sight distance to access on and off of Oakmont is adequate. A sight check was done and the driveway grade is shown to be 12% as various points.
- Design Considerations: This is a 5-bedroom home on a .693 acre lot. There is greenspace to the rear and vacant lots on either side. It appears parking is sufficient for four to possibly five cars and would have to be enlarged to meet the minimum standard of one car for every two occupants. The outdoor recreation areas are located close to the lot lines. Due to the size of the home and the relatively narrow small lot, screening detail should be examined carefully.
- Other Considerations: This immediate area seems to have a mix of occupied and rental uses. A request was heard by the Zoning Board for 1 Oakmont Court in September 2000, February 6, 2003 and October 22, 2003. *The once open area to the rear and east side of the house has been enclosed.* Petitioner has indicated that he has purchased lot #5 which is adjacent to the request. *This petition was received prior to the recent change, therefore, is coming forward for public hearing under the prior rules.* Enclosed for your information are copies of the minutes and finding of fact from the September 2000, February 2003 and October 2003 requests for a special use for 1 Oakmont.

- Bill asks about the original survey at the other requests. Was the setback always 15.6 feet?
    - Paul states that the topographic survey was been done prior to building then a survey was done after the house was constructed.
- Mel states that the trend in the area is rental, they are on public sewer which is an advantage, the applicant requested prior to building as did the rear neighbor and shared what needed to be done, but the house was constructed with disregard to the suggestions. Any problems created were that the applicant did not go through the process the same way as the rear neighbor. This

could have easily been in the rental program four years ago, but that is not our problem that it is not because the applicant did not follow the suggestions of the planning commission.

- Susie states that setbacks are still an issue; however, they did enclose the other outdoor activity area. The miscellaneous statistics information was requests that were not grandfathered in, but they did not list the number of bedrooms and that makes a difference.
- Mel states that we consider the number of bedrooms and the size of the house to determine the relation with setbacks. The issues are the driveway and the screening of the outdoor activity area. You may own the property today to the southwest, but you may not own it forever. We do have to take that into consideration. Would you be willing to deed some property to the requested property to alleviate the concern of this board on the setback issue?
    - Scott states there is a 40 foot area that would need to be corrected and could be. We did take that into consideration and if that needs to be done we can do that to meet the requirement. Would the option of tearing up the patio have the same result that you want? Then you have no issue of the outdoor area within the 50 foot guideline requirement.
- Susie asks if they incorporate the additional area on the lot if they would not tear out the patio area
    - Scott states they would not then tear out the patio area
- Tom asks if you are placing constraints on the other lot that you do not want to do.
    - Paul states that if we took a 35 foot width in the rear and take a triangular wedge with none taken at the front would that work. The additional area would be about 40 to 45 feet on that side for screening. You are still maintaining the road frontage requirement and should still have a build able parcel.
- Dave asks what the issues at the prior meetings were. I can see that one was the driveway grade and possibly the setback requirement for the activity area.
- Mel states that those were the main concern.
- Bill states issues were in the initial request of the square footage of the house on this lot and the number of bedrooms; they did request the house to be downsized to meet the requirements. We heard testimony on this request that gains the balance of the rental income and the neighboring property values is secondary to our job to protect the permitted uses from the special uses.
- Bill talks about a previous request which was actually downsized prior to building to meet the requirement on the lot.
- Tom is looking at the issues of the 2003 February request which were the 50 foot setback and footprint to large for lot. The driveway can be fixed to meet the requirement. How much do we need to increase the size to make it conform to what we have previously done?
    - Scott comments that a six bedroom was approved on a smaller lot. We do not have a setback violation or a footprint ordinance at that time.
    - Mel states that it was a different configuration
- Terry Kurt states that if you change the lot size would the board request favorably the request and is the petitioner willing to do that.
    - Scott states that I would not know if it would meet and then if they came back and it didn’t what would happen.
    - Terry asked if the petitioner willing to change the lot size.
    - Scott says he would be willing to change the lot size.
- Mel states they are looking for enough setback to allow screening to fit in. Would recommend that the line from the back be extended and then brought to the front corner point.

- Tom states that we need to make it work on the lot where the request is.
- Bill asks about previous requests that we have passed.
    - Linda states that you have passed requests that area 15 feet from the lot line and they are pretty good size houses for bedrooms.

A motion was made by Mel Gratton to approve the request with the following conditions:

1. Driveway grade to meet the 10% requirement
2. Extend the back lot line at the back corner point 35 feet southwest and bring that line to the front corner point of the existing property intersection to be added to the requested property.
3. Screening to be added in the new incorporated area to shield the outdoor activity area from the neighboring lot to be at least 6 feet in height at time of planting with coniferous trees.

Seconded by Dave Jansen

Mel Gratton read the standards from the County Zoning Ordinance that need to be addressed.

Standards – No special use shall be recommended for approval by the Planning Commission unless the Commission shall find:

(1) The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare

The request does not endanger the public health, safety, morals, comfort or general welfare with the added requirements of setback; Standard Met

(2) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or substantially diminish and impair values within the neighborhood

This use will not diminish the enjoyment of the properties in the immediate vicinity or temporarily impair the values with the neighborhood; Standard Met

(3) That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district

Development will not be effected; Standard Met

(4) That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided

The property will have an adequate driveway and the adequate parking, drainage, access roads and utilities are provided; Standard Met

(5) That adequate measures have been or will be taken to provide ingress and egress designated to minimize traffic congestion in public streets

Ingress, egress will be adequately provided; Standard Met

(6) The special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Planning Commission.

Conforms to the applicable regulations of the district; Standard Met

Roll Call: Bill Tonne – Aye
Mel Gratton – Aye
Dave Jansen – Aye
Susie Davis – Aye
Tom Heidenreich – Aye

Reports and Comments:
Zoning Review meeting is scheduled for May 18, 2006 at 7:00 pm in the County Board Room

Tom Heidenreich made a motion to adjourn at 11:00 PM. Susie Davis seconded the motion. Voice Vote: All Ayes