

EEHW COMMITTEE Special MEETING
July 2, 2014
5:30 P.M.

MEMBERS PRESENT

Tim Dudley – Chair
Jerry Potts – Vice Chair
Kevin Greenfield
Phil Hogan
Merv Jacobs

COUNTY PERSONNEL PRESENT

Jennifer Hoffman, P&Z
Mike Baggett, State’s Attorney’s Office
Matt Brown, Board Member
Linda Little, Board Member

Jeannie Durham, County Board Office

MEMBERS ABSENT

Patty Cox
Kevin Meachum

The meeting was called to order by Chair Tim Dudley at the Macon County Office Building.

Approval of Minutes from last meeting (6-9-14)

Motion to approve made by Phil Hogan, seconded by Merv Jacobs, motion carried 5-0.

Chair Dudley announced that Mike Baggett from the State’s Attorney’s office would make a few very important comments before getting started.

Mike Baggett explained that this meeting is an EEHW hearing with respect to a matter that was brought before the Zoning Board of Appeals. The ZBA met on Wednesday, June 4, 2014 and considered testimony & evidence presented to it on petition for rezoning. That is what is before the EEHW committee tonight. It is important for the committee, the County Board Members, to know that when it comes to considering anything that the ZBA did not have the ability to consider at its hearing, the County Board should disregard anything that was not presented to it in the form of evidence to the ZBA. There is case law that says that the ZBA as a quasi-judicial body appointed by the County Board for hearing these types of matters has the power to swear witnesses, take evidence, and make findings of fact that are then to be considered by the County Board in making decisions on the matters passed from ZBA to the Board. With respect to the matters here tonight, there is a right to public comment. Mike said he is not advising the committee to disregard what they hear in public comment, but he does advise the committee with respect to any type of evidence that was not presented to the ZBA at its hearing which would be detailed in its meeting minutes. He advised that if the members do not have a copy, they obtain one from the Zoning Administrator, review it, and take into consideration what is heard tonight. However, the decisions made with respect with passing on this matter and sending it on to the County Board with either your recommendation to approve or to deny, you have to take the ZBA’s Findings of Fact and you have to take the evidence it was presented with at its hearing with greater diligence than with respect to the things you might hear tonight which are presented as testimonial evidence. You are not allowed to hear testimony or evidence in this forum. That is for the ZBA because they are placed under oath and they have the right of cross examination. It is important to know that there is case law out there that if the County Board makes its decision

on a zoning matter based on evidence that was not presented at the ZBA, but on evidence it received on its own, then whatever action the County Board takes can be voided after the fact by a court.

Comment was made that it would have been nice to have a copy of the ZBA minutes. Chair Dudley & Jennifer Hoffman both stated that the minutes had been emailed to members. Kevin Greenfield stated that he had read them.

OLD BUSINESS

R-04-06-14: Terry Brown for rezoning approximately 2.62 acre(s) from (A-1) Agricultural to RE-5 Single Family Estate Zoning. This property is commonly known as 13901 Illiopolis Rd in Niantic Township

Citizen's Remarks

Chair Dudley asked if anyone was present that wanted to speak against the zoning.

Mary Davis addressed the committee stating 13929 Illiopolis Road is the address where she & her husband, Scott, reside. She explained that their property is directly adjacent to the property being discussed at this meeting. She pointed out their property and the property of Terry Brown which has been requested to be rezoned from R-1 to A-1. Chair Dudley verified with Jennifer Hoffman and corrected that the property is currently A-1 and is requested to go to RE-5. She said some of her information was presented at the ZBA hearing by Mr. Stacey who was not present, but she had a letter from him.

Ms. Davis gave a brief history saying they had purchased their property in 1988. They were unaware of the illegal subdivision of the 5 acre plot. The owner had been granted a special use permit allowing for a one time split of the Davis 5 acres. According to the Homestead Provision the home & the property not being used by the farmer are allowed a one-time split. An attempt to use the provision twice is generally not permitted. A special use permit was not issued to allow the rezoning for a different use, so now we have two issues. Number 1, we have a violation of a plat act. She said she had submitted a letter she received several years ago to Jennifer that stated that to deny the issue of a parcel of land that has been subdivided contrary to the provisions of this act. She said there is also a nuisance violation. She stated that they own property that is immediately touching more than 20% of the perimeter of that property. A barn (pointed out on map) is less than 20 feet from their property and a machine shed (pointed out on map) is approximately 30 feet from the Davis property line. She said she believed that that gives them the right to request denial and also, if it gets to the point where they would request a super majority to vote for the rezoning. She went on to say that there are several issues that have been brought up. Two were brought up by Mike Stacey who was at the June ZBA meeting but unable to be here today. She read his letter, "I am writing this letter to oppose the zoning of the property on Illiopolis Road. I am the Road Commissioner for Niantic Township and I am concerned about the water that comes through this property down the draw on the property. If the flow was changed in any way, it would not line up with the culvert that goes under the road and this would cause damage to the road in times of heavy rain." Ms. Davis said that Mr. Stacey was also at the meeting and presented testimony against the rezoning of the property on the grounds of being the farmer that farms the land that is south and east (pointed out on map). She said she knew many

of those present had taken the time to go out and look at the property and the situation. (walked away from microphone – no longer audible) As Ms. Davis returned to hearing range of the microphone, she was pointing out the 5 acres that was once owned by Helen Stahl who sold off the 5 acre plot of land to Harold Koonce who is now deceased. He is the one who illegally subdivided the property and sold it to the Davis's. She said that they know the Browns knew nothing about that situation. Ms. Davis pointed out the land that Mike Stacey farms and said that Mike Stacey's brother lives one house down, so they (The Davis's, Mike Stacey, & Mike's brother) are the only three houses on that side of the road. She said that his letter states, "the farm ground is owned by Helen Stahl. She is 94 years old and on her behalf, I am speaking for her. Our main concern is the drainage of the field around the property. There are field tiles that go through this property. We do not want them blocked by tree roots or damaged if something was to be built over them. They are about 40 to 50 feet from the east property line." The other concern is the draw which he put in his other letter. Ms. Davis said another concern is the well which is located on Helen Stahl's property across the road from the Davis house. She said that she does have this in her contract from when she bought her home. The easement allowed Helen Stahl granted a one-time split. Ms. Davis said they do not know where it splits, but it is the well for their home and it is also the well for the property of the water. If this were to be rezoned and people were to want to build on it, we would have to find, somehow, where the split is and we would then have the cost and the work to get that well capped off. We are also aware that the person who wants to buy this property wants to run a hobby farm. Once again, we go back to the fact of the nuisance violation. These pieces of property where he wants to run this hobby farm are less than 50 feet from our property. That would be something that we are assuming would be illegal. (Mr. Dudley warned Ms. Davis of the time restrictions) Ms. Davis said that they did not move to the country to have neighbors or a hobby farm next to them and for these reasons, they request that the rezoning be denied.

Chair Dudley asked if there were more objectors. There were none.

Chair Dudley asked if there was anyone present wishing to speak in favor of the zoning. There was no one.

Chair Dudley went on to say that he had gone out to the property and taken pictures and had provided color pictures for the members of the committee to look at.

He also said he had gone over the minutes of the ZBA and he had some questions. He asked Jennifer what a hobby farm was and what the ordinance on that said. Jennifer Hoffman explained that they were requesting a change in zoning to RE-5, which allows the keeping of livestock. This can be a horse, or cow, or whatever they want. Mr. Dudley asked if there restrictions as to how far from the neighbor's property lines in a country division there should be. Jennifer said that the zoning ordinance says that if you are going to have a structure that will house animals, it has to be 75' from all lot lines.

Mr. Dudley said that he had noticed that the Plat Act was referenced a couple of times and he was curious so he looked it up. He said it was quite interesting and there are some provisions about when things are subdivided they should be platted.

Jerry Potts asked about locations and distances for lines & buildings on the map. Jennifer said that brings up the issue that if this would have been platted correctly and gone through the subdivision plat process through the County, it would not have even been approved by the office.

Mr. Greenfield made a motion to deny, seconded by Mr. Hogan.

Mr. Potts asked if there was anything in place to prevent people from sharing wells. Jennifer explained that well issues are handled by the Health Department. She said she had spoken with Kathy Wade about it and found out that if someone does decide to build a house on this property, they will have to drill their own well on the property for it.

Roll call vote showed 5 aye / 0 nay votes. Motion to deny carried.

Linda Little asked if the matter still goes before the full board with recommendation to deny. Chair Dudley confirmed that it does and will be presented at the July 10 Board meeting.

NEW BUSINESS

Report from SRO Sub-Committee Chair: Jerry Potts reported that the SRO sub-committee had met just prior to this meeting and had passed the ordinance presented by Mike Baggett on the raffle & poker runs.

Kevin Greenfield asked if people have to have a permit for a poker run. Mike Baggett said you've always had to have a permit for a poker run. By Statute, it was a State thing where you paid several hundred dollars for the permit and the money went to the State. The Statute has recently been amended which makes it a County affair and instead of charging \$400 - \$500, the charge is now \$25. Jay Dunn asked if the \$25 had been mandated. Mike said it is in the Statute. He said there may have been a range, and that may have been the upper range, but the \$25 was in the Statute. Jerry Potts added that they had discussed that it could possibly be changed. Mike agreed that changes could be made with respect to how it is issued and possibly the fee if it is permissible by Statute. At this point, it was discussed at SRO that since there are already people applying for the licenses and they cannot lawfully conduct poker runs without the license, if the Board does not take action now, they would not be able to conduct their poker runs. We need to get something on the books quickly.

Closed Session

None needed

ADJOURNMENT

Phil Hogan made a motion to adjourn, seconded by Jerry Potts, the motion carried 5-0 and the meeting was adjourned at 5:52 p.m.

Minutes submitted by Jeannie Durham
Macon County Board Office