Minutes of the Land Use, Parks and Environment Committee – August 16, 2005

Chair Kolb called the meeting to order at 8:46 a.m.

Present: Chair Walter Kolb, County Board Supervisors Kathleen Cummings, Scott Klein (arrived at 9:25 a.m.) Bill Kramer (arrived at 8:58 a.m.), Daniel Pavelko, Vera Stroud (arrived at 8:50 a.m.) and Pauline Jaske.
Staff Present: Legislative Policy Advisor Mark Mader, Office Service Coordinator Windy Jicha.
Also Present: Scott Benz of JBJ Construction, Ronald S. Gasser, Parks and Land Use Director Dale Shaver, Planning and Zoning Manager Dick Mace, Environmental Health Manager George Morris, Enterprise Operations Manager Pete Pulos, Internal Audit Manager Lori Schubert, Principal Internal Auditor Jackie Siewert, Jim Ellingson.

Approve Minutes of August 2, 2005
MOTION: Pavelko moved, Jaske second, to approve the minutes of August 2, 2005. Motion carried: 4-0.

Read Correspondence
The following items were addressed:

1. Article from the August 8, 2005 Wall Street Journal entitled, The Theology of Global Warming.
2. Letter from Perry Lindquist to the LUPE Committee regarding S.E. Area Land Conservation Tour on September 22, 2005.

Executive Committee Report by Walter Kolb – No meeting

Meeting Approval
MOTION: Cummings moved, Pavelko second, to approve attendance of the Land Use Committee at the S.E. Area Land Conservation Tour on September 22, 2005. Motion carried: 4-0.

Supervisor Stroud arrived at 8:50 a.m.

Consider Proposed Resolution: 160-R-008 Year 2005 Approval of Amendments to the Waukesha County Development Plan
Mace gave the committee a thorough description of the property and the issues associated with it. Mace said the staff recommended that this amendment to the Medium Density Residential category be approved, subject to the following conditions:

- There be no more than 52 dwelling units on the site
- Access shall be via a newly developed road to the east accessing Janacek Road
- Access to Elizabeth Court be gated and used for emergency purposes only
- The height of the buildings will be reduced so as to avoid adverse impact of higher buildings on the single-family residential properties to the north.

Mace said subject to the conditions above, this project represents land use compatible with said uses and a good transitional use between the single-family uses on the north and the commercial uses on the south. In addition, the access provision to Janacek Road serves as a much safer access for the residents of this project and eliminates the need to revise Elizabeth Court, which would impact some of the wetlands associated with Poplar Creek.

Supervisor Kramer arrived at 8:58 a.m.

MOTION: Pavelko moved, Jaske second, to approve 160-R-008. Motion carried: 6-0.

Consider Proposed Ordinance: 160-O-037 Amend the Town of Vernon District Zoning Map of the Waukesha County Zoning Code for the Town of Vernon by Conditionally Rezoning Certain Lands Located in Part of the NE ¼ of Section 1, T5N, R19E, from the A-5 Mini-Farm District to the B-2 Local Business and B-3 General Business Districts (CZ-1573)

Mace gave the committee a description of the property in this ordinance. He explained that the applicant, Ronald S. Gasser, is asking to terminate his existing Conditional Use Permit for a small landscaping business consisting of storage and distribution of landscaping materials and is applying for a new Conditional Use Permit for a contractors yard along with this rezoning request. The operation he is proposing, will consist of a large expansion of an existing barn to accommodate offices, indoor storage and storage and display of equipment. He is proposing to retain the two existing single-family residences on the parcel in the area that is proposed to be rezoned to B-3 Local Business District. The portion of the property, which is proposed to be rezoned to B-3 General Business District, will accommodate the contractor's yard and landscape material storage, consisting of outside storage of equipment, numerous bins for stockpiled materials and parking of equipment for rent. The applicant is proposing to sell retail landscape materials and items. As part of the Conditional Use, he is also proposing an earth-altering activity Conditional Use to fill the property to the elevation of I-43 and construct a large storm water facility. Mace said the Planning and Zoning Division staff approves this request subject to the 13 conditions listed in the ordinance.

Regarding condition 12, Jaske said she approves of the ability to recover costs but is concerned that there are no limits to the amount charged. Gasser said the Town Board has procedures in place to negotiate and appeal any charges. It is up to the Town Board to police these charges.

MOTION: Kramer moved, Kramer second, to approve 160-O-037. Motion carried: 6-0.

Consider Breitlow Appeal of Waukesha County Sanitary Ordinance 145-77

Morris introduced Jim Ellingson to the committee. Morris explained that Ellingson is a builder authorized by Breitlows to represent the property because the family was unable to attend the meeting.

Morris gave a brief history of the process. Waukesha County has a sanitary ordinance-governing private sewage systems in the county and implements the state uniform plumbing codes. The county doesn't think it's good public policy to use a holding tank for new construction. When residents request a sewage holding tank for new construction, the Waukesha County ordinance provides an appeal process and that is why this item is on the agenda today.

Klein arrived at 9:25 a.m.

Morris said the owners would like to install a holding tank for new residential construction. Morris reviewed the handout sent to the committee including: name of petitioner, date, owner, location of property, the request and other information. The exhibit "A" mentioned in the request part of the handout is a letter from Patricia R. Breitlow, Power of Attorney for Annabelle Sickels, one of the owners. The letter, which is page three of the handout, explains why the owners need a holding tank.

Morris said the soil tests done on July 11, 2005 show there are no soils on the property it is all fill. There's no other sewage option for the property except a holding tank. The property has not been developed. If there had been an existing residence, a holding tank could be used as the system of last resort. There's never been a sanitary system on this property so the option of a holding tank isn't possible.

Holding tanks can be used for the short-term if municipal sewers are proposed within two years as long as certain provisions are in place.

Morris explained that the committee has two options. The committee can deny the appeal or they can grant the appeal pending the Town of Merton approving and signing a holding tank agreement. The town will need to enter into a holding tank agreement. Any action taken by the committee needs to be approved by the town.

Kolb said we've never approved a holding tank for new construction. Would we be setting precedent by approving this? Why can't another system be used at this property? Morris said there is high ground water. It is at lake level. Ellingson said water can be hit at three feet.

Kolb asked will the lake flood over the property? Morris said it used to be a low area but it has been filled. Site and soil conditions on the property say there's no other sanitary alternative.

Klein said there are homes on both sides of this property. What's different about this lot versus the neighboring ones? Ellingson said the house to the north was built in the late 1980s on a similar lot. The owners purchased additional land beyond the conservancy so their septic could be pumped through the conservancy and beyond. The other lot has an older home and it could have had a holding tank.

Klein asked are any of these systems failing? Morris said he isn't aware of any failing systems.

Morris said in the past a family had a property in the Town of Eagle on a lake with a storage shed. The family used the property in the summer months extensively. The owner died and when they settled her estate, they wanted a holding tank permit to increase the value of the property. The committee denied it. The appellant went to Circuit Court with the issue and the judge upheld the committee's decision. Morris said value is not part of the equation. It is a policy issue and shouldn't be based on value. We don't believe there's a hardship here. If we open the door for this holding tank, how many other requests like this will we get in the future?

Klein said in Pewaukee, in areas we knew would get sewers, we allowed holding tanks and lots of people wanted them.

Kolb said during his time on the County Board, we've never approved a holding tank. Morris said one was approved in 1995when the existing approved site was destroyed and no other options were available.

Jaske asked are there any plans for sewers in this area? Morris said there are no plans. Shaver said if there were plans, we would have discussed them with the petitioners.

Jaske said in 2000 there were four alternatives available but none are available here. Why aren't there any alternatives? Morris said the ground water is close to surface; the soil is fill so none of the systems comply here.

Jaske asked is there land available behind this property to shoot out the septic? Morris said there is conservancy across the street.

Cummings verbally reviewed the details Morris shared with the group to make sure she understood what he said.

Morris said the soil tester's report from July 11, estimates the ground water at zero. It is very close to the surface so it is estimated at zero feet not three feet as stated earlier by Ellingson.

Stroud asked who checks to make sure residents are pumping their holding tanks? Does someone review the records to make sure the tanks are pumped? Morris said the holding tank agreement calls for semi-annual reports from the septic pumper. Ellingson said these systems have alarms to alert owners when the tanks need to be pumped. Jaske said the alarm system is good if you're there but not good if you're not there when the alarm goes off.

Pavelko asked if this were a commercial property, would this be an issue? Morris said no because holding tanks are the system of last resort for commercial properties. Klein asked does Merton allow holding tanks on commercial properties? Morris said yes.

Cummings asked why is a holding tank allowable on commercial properties? Morris said that's been the county's position for years. Businesses are better able to pay for system maintenance and can better control the use of it. It comes in to play when you're sighting public and commercial buildings. There are good land use plans that site for holding tanks.

Shaver said there has been debate in Washington County about holding tanks at a major intersection that is beyond sewers. At what level do you allow the site to be developed where there are no sewers and do you allow businesses to develop the land and install holding tanks?

Cummings asked for commercial/public buildings, would there have to be an overwhelming argument to grant a holding tank? Morris said yes. At the intersection of I-94 and Highway F, the soils weren't good so initially the buildings were on holding tanks. The holding tanks were used ahead of sewers where there was a desire for that kind of development.

Morris said the committee also needs to determine if a holding tank should be granted is it for the current owners, the prospective buyer or someone else.

Kolb said he doesn't want to see the courts circumvent Ordinance 145-77 because there's a good reason for it to be in place.

Ellingson said he knows when you go through the Park and Planning Commission, financial hardship isn't taken into consideration and he has mentioned this to the property owner's daughter. He said he would like the committee to take into consideration how many years they've had the property. The owners could have put a cottage there many years ago and been polluting the area for 40 years. If they had done that the county would have granted them a holding tank. The owners feel that because they weren't polluting the area, they won't be given a holding tank. He ran into a similar situation on a house. The vacant property had an outhouse and the county granted a replacement system. When he applied for the septic permit, he was asked if there was an outhouse. The soil conditions for that property could take a standard septic. The property owners' main argument is they're not allowed the highest and best use of the property.

Klein said the argument that they should be granted a sanitary system because they haven't been using a failing system is wrong. Once you start granting this, you open the door for more. He doesn't think past sins should be changed in policy to allow this.

Jaske said we are more educated and concerned than we were 40 years ago. The cost of prevention is less than cleaning up the cure.

MOTION: Jaske moved, Klein second, to deny the Breitlow appeal based upon upholding provisions of Waukesha County Ordinance 145-77 and that the Waukesha County Parks and Land Use Committee does not support the increased use of sewage holding tanks for new residential development in areas where a municipal sanitary sewer is not imminent within two years.

Jaske said she built a commercial building using a holding tank and it wasn't a pleasant experience. We were promised sewers but they took longer than expected to arrive.

Motion carried: 6-1. (Stroud voted no.)

Stroud asked how many people would use the tank? Ellingson said the owners probably want to build a house and sell the property or to sell the property with the tank. He doesn't know if they can build a house on the property. Morris said the regulations require a sanitary permit to put in a system.

Ellingson asked is the only alternative to go to Circuit Courts? Morris said yes.

Discuss and Consider the Ice Arenas Audit
The scope of the Ice Arena Audit was to assess the efficiency and effectiveness of the operations of the ice arenas in Waukesha County. The audit included comparisons to other, similar publicly funded ice facilities in the area, including operational procedures, financial information and marketing efforts. The report contains four recommendations to improve reporting related to the operations and maximize revenues to improve the overall financial results of the operations.

Schubert outlined the background of the ice arenas in Waukesha County as detailed in the audit. The audit recommended that to reduce the potential for future claims for injuries sustained at the ice arenas, the department place "skate at your own" risk signage at both facilities. Pulos commented that this has been done.

Schubert outlined the financial activity of the rinks as found in pages 8 through 11 of the audit. The auditors looked at ways to make more profits. They found that salaries and benefits consist of 42% of the expenditures, which is quite minimal. It is difficult to cut expenditures in order to show a better profit. The only way to increase profits is to increase revenues but to increase revenues mean increasing the prices, which could reduce the number of users at the facility.

The audit recommends that to maximize and capture all potential revenues, as well as capitalize on marketing efforts of ice arena dasher boards, department management should:

- Develop annual advertising goals and objectives that will maximize the advertising space found in both arenas.
- Develop marketing strategies that will allow for more follow up with potential customers.
- Review and analyze future sales by customer lists in a more accurate manner.
- Develop strategies that will allow for the timely removal of non-renewed customer advertising from the ice arenas.

Pulos said on paper the ice arenas are losing money but this is due to depreciation. Without depreciation, there would be positive cash flow for the facilities. We follow gap accounting principles, which affect us on paper.

Mader said whenever we deal with enterprise accts, we're charging in overhead expenses from the Department of Administration, Park and Land Use Management, etc. When people talk about whether or not to close the

ice arenas, some of those costs won't go away and won't be covered by closing these facilities. People forget these are cash flowing entities and we are in the best point we can be in financially given the alternatives.

Kramer said even if you get rid of the ice arenas the cost of administrative overhead still needs to be covered. It doesn't go away. Pulos said the enterprise funds add $1.3 million to the general fund.

MOTION: Cummings moved, Stroud second, to accept the Ice Arenas Audit. Motion carried: 7-0.

Motion to Adjourn
MOTION: Kramer moved, Pavelko second, to adjourn the meeting at 10:27 a.m. Motion carried: 7-0.

Respectfully submitted,

Pauline T. Jaske
Secretary