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TO: Adam Wallen, Director of Planning & Development
Renee Hanlon, Deputy Director of Planning & Development

FROM: ASA Cecelia Blue

DATE: July 30, 2024

RE: Conditional use permit – Extensions / PED Committee

The McHenry County Department of Planning & Development requested a legal opinion as to whether: (1) the McHenry County Ordinance may provide for the granting of extensions on already approved conditional use permits without holding a second public hearing.

Analysis is as follows:

Currently, Illinois statute provides that “The county board may, by an ordinance passed under this Division, provide for the classification of special uses.” 55 ILCS 5/5-12009.5(a). “A special use may be granted only after a public hearing conducted by the board of appeals.” 55 ILCS 5/5-12009.5(b).

“The county board may, by ordinance, delegate to the board of appeals the authority to grant special uses.... all special uses... or... certain classes of special uses... If the county board enacts an ordinance delegating its authority, the board of appeals must, after conducting the required public hearing, issue a finding of fact and final decision in writing on the proposed special use.” 55 ILCS 5/5-12009.5(e).

“In municipalities of less than 500,000 population...boards of appeals or corporate authorities may determine and vary.... relating to the use, construction, or alteration of buildings or

structures or the use of land... [however] no such variation shall be made by the corporate authorities as specified without a hearing before the board of appeals.” 65 ILCS 5/11-13-5.

Illinois statute requires that a public hearing be held *prior* to the issuance of a special (conditional) use [permit], whether the County Board retains the power vested in it by the State to grant special use or whether the county delegates its power to the board of appeals. Legislative intent seems to be that *prior* to the issuance of any variance, external stakeholders shall have the opportunity to receive notice and be informed of potential variation to regulations regarding use, construction, or alterations of buildings or structures or the use of land.

Illinois statute is silent regarding extensions and whether the board of appeals must hold a second public hearing for an extension of an already approved conditional use permit, which in obtaining the initial special use approval, met the public hearing requirement.

The McHenry County Ordinance (“Ordinance”), under § 16.20.040(H) Conditional Use, provides that conditional use permits are valid for 10 years unless otherwise limited or permitted as part of the County Board approval. Additionally, the Ordinance provides that any application to renew the conditional use permit must be filed before the permit expires, and to re-establish the conditional use permit, a new application is required.

Currently, as practice, whether a conditional use permit is renewed via renewal application prior to expiration of the permit or a new application is required after expiration of the permit, both applications are considered “new” and go through the same process, including hearing. The difference between the two applications is a \$1,200 fee for the renewal application and a \$2,300 fee for the new application.

Conclusion: Based on the way the Ordinance is applied under § 16.20.040(H) Conditional Use, a public hearing is required for the extension of a conditional use permit.

The Committee may consider removing the 10-year time limitation from the first paragraph of Ordinance § 16.20.040(H), and instead of the first paragraph of this section reading:

Conditional use permits are valid for a period of ten (10) years, unless otherwise limited or permitted as part of the County Board approval. Any application for renewal of a conditional use permit must be filed before the expiration of such timeframe. In addition, subject to verification by the Zoning Enforcement Officer, a conditional use permit will expire under the following conditions. To re-establish the conditional use permit, a new application is required.

The first paragraph of Ordinance § 16.20.040(H), could read instead:

~~Conditional use permits are valid for a period of ten (10) years, unless otherwise limited or permitted as part of the County Board approval. Any application for renewal of a conditional use permit must be filed before the expiration of such timeframe. In addition,~~s Subject to verification by the Zoning Enforcement Officer, a conditional use permit will expire under the following conditions. To re-establish the conditional use permit, a new application is required.

The numbered paragraphs of Ordinance § 16.20.040(H)(1) through (H)(5) may then follow as currently listed.

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