

# DEKALB COUNTY DEPARTMENT OF DEVELOPMENT SERVICES

PLANNING • BUILDING • GIS

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## AGENDA

DeKalb County Plan Commission

Commissioners Court – 2<sup>nd</sup> Floor DeKalb County Court House

**WEDNESDAY, January 17, 2024**

**8:30 a.m.**

To view the livestream, click here: <https://tinyurl.com/YouTubeDCPC>

1. Roll call
2. Pledge of Allegiance
3. Prayer
4. Election of Officers

• President: \_\_\_\_\_ ACTION Motion to nominate:  
Second:  
Motion close nomin's:  
Second:  
In favor:      Opposed:

• Vice-President: \_\_\_\_\_ ACTION Motion to nominate:  
Second:  
Motion close nomin's:  
Second:  
In favor:      Opposed:

• Secretary: Meredith Reith      ACTION Motion to nominate:  
Second:  
Motion close nomin's:  
Second:  
In favor:      Opposed:

5. City/Town Representatives

- Auburn (2<sup>nd</sup> Tuesday @ 6 PM): \_\_\_\_\_
- Ashley (Feb. 2, June 1 & Oct. 5): \_\_\_\_\_
- Butler (Odd Months: 2<sup>nd</sup> Monday @ 6:30 PM): \_\_\_\_\_
- Garrett (4<sup>th</sup> Tuesday @ 4:30 PM): \_\_\_\_\_
- Hamilton (4<sup>th</sup> Monday @ 7 PM): \_\_\_\_\_
- Waterloo (3<sup>rd</sup> Monday @ 5 PM): \_\_\_\_\_

6. Board of Zoning Appeals Member Appointment by the Plan Commission (currently Jason Carnahan)

- Meetings held on 2<sup>nd</sup> Monday @ 6 PM: \_\_\_\_\_

- Alternate (to be used in case of conflict of interest, or other reason member is not able to attend. Can only be alternate for Plan Commission member. Cannot be alternate for any another BZA member.)
    - Current Alternate: Jerry Yoder
7. Plat Committee Members: Need 3 minimum or 5 maximum at a meeting.
  8. Approval of Minutes: December 20, 2023
  9. Consideration of Claims: December 2023

Payroll	
ESRI – Enterprise License Agreement (GIS software)	\$25,920.00
Kruse & Kruse P.C. – 4 <sup>th</sup> quarter fees	\$2,839.08
Verizon	\$76.86
Lassus	\$235.24
Amazon – office supplies	\$54.91
USPS – stamps	\$66.00
WestWood Car Wash	\$15.00
<b>TOTAL:</b>	<b>\$29,207.09</b>

10. Old Business: None
11. New Business:
  - Discussion of UDO Amendments:
    - Definition of Accessory Building or Structure
    - Non-Conforming Lots, Structures & Uses
12. Reports from Officers, Committees, Staff or Town/City Liaisons:
13. Comments from Public in Attendance:
14. Adjournment:

Next Meeting: February 21, 2023

**If you cannot attend, please contact Meredith Reith  
mreith@co.dekalb.in.us | (260) 925-1923**

**\*PLEASE ENTER THROUGH THE NORTH DOOR OF  
COURTHOUSE LOCATED ON SEVENTH STREET.**

**\*\*No cellphones, tablets, laptops, or weapons are permitted.**

**MINUTES**  
**DEKALB COUNTY PLAN COMMISSION**  
**Wednesday, December 20, 2023**

The Regular Meeting of the DeKalb County Plan Commission was called to order at 8:30 a.m. in the DeKalb County Commissioner's Courtroom by Plan Commission President, Jason Carnahan.

**ROLL CALL:**

Members Present: Jason Carnahan, Mike Watson, Bill VanWye, Jerry Yoder, Frank Pulver, Suzanne Davis, Angie Holt, Glenn Crawford and Elysia Rodgers

Members Absent: Sandra Harrison

Staff Present: Plan Commission Attorney Andrew Kruse and Director/Zoning Administrator Chris Gaumer

Community Representatives Present: Don Myers – City of Auburn

Public in Attendance: None

**PLEDGE OF ALLEGIANCE:**

Jason Carnahan led The Pledge of Allegiance.

**PRAYER:**

Jerry Yoder led prayer.

**APPROVAL OF MINUTES:**

Angie Holt moved to approve the October 18, 2022, meeting minutes. Seconded by Suzanne Davis.

Chris Gaumer stated that he amended the minutes to add how each member voted for the motion of the petition.

Angie Holt amended her motion to approve the October 18, 2023 minutes. Seconded by Suzanne Davis. None opposed. Motion carried.

**CONSIDERATION OF CLAIMS:**

Bill VanWay moved to approve the October & November 2023 claims. Seconded by Angie Holt. None opposed. Motion carried.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

2024 Attorney Fee Agreement: Chris Gaumer introduced the agreement with Andrew Kruse serving as the Plan Commission & Board of Zoning Appeals attorney for 2024 and the fees associated. Mr. Kruse added that he would like the opportunity to continue being the PC & BZA Attorney for 2024.

Mike Watson moved to approve the 2024 Attorney Fee Agreement with Andrew Kruse. Seconded by Jerry Yoder. None opposed. Motion carried.

Auburn Extra Territorial Jurisdiction: Chris Gaumer gave an update to the Auburn Extra Territorial Jurisdiction (ETJ) that he has been working on with the City of Auburn Building Planning & Development staff. Mr. Gaumer reviewed each change to the ETJ Agreement. He emphasized that the map will not be changing. The last update was in 2017.

Frank Pulver asked about the area around Bear Creek and County Road 52. Mr. Gaumer pulled up the map of the ETJ area to explain where the ETJ boundary is located.

**\*\*Mike Watson had to leave the meeting early\*\***

Frank Pulver moved to approve the Auburn Extra Territorial Jurisdiction. Seconded by Suzanne Davis. None opposed. Motion carried.

Plan Commission/BZA Fee Schedule: Chris Gaumer reviewed the proposed changes to the fee schedule. He discussed the proposed changes reflect the discussion had with the Plan Commission in previous meetings. Frank Pulver questioned the appeal of zoning administrator decision being a high fee. Mr. Gaumer explained that the fees are not meant to detract development but rather have the fee be in line with the time required to review the petition and bring before the Plan Commission and Board of Zoning Appeals. Frank Pulver and Jerry Yoder agreed with the fee schedule. Angie Holt acknowledged that the fees should reflect the time staff takes to review each petition prior to going before the approving body.

Angie Holt moved to approve the Fee Schedule. Seconded by Jerry Yoder. None opposed. Motion carried.

Discussion of Finding of Fact: Chris Gaumer stated that Angie Holt had asked if she could bring up a a consideration of changing how the Findings of Fact are done with Plan Commission petitions. Ms. Holt explained that it caused her concern with how the “round robin” style of doing the findings may give the impression that staff proposed findings are the same options of the Plan Commission. Believing that it’s not a totally inclusive way of doing the findings and could detract other members of being involved.

Bill VanWye agrees with Ms. Holt and would like to see staff cover the factual points of the findings and the board members can fill in with their thoughts and their own words.

Mr. Gaumer explained how Andrew Kruse does want members to express their opinions. Mr. Gaumer offered how Cass County & Logansport did their findings.

Jerry Yoder offered insight into how the findings were done in the past. He explained that he used the findings as guidance and would offer his own thoughts especially if there was a disagreement. He agreed with Ms. Holt in the proposed changes.

Mr. Kruse liked the idea of changing how we do the findings. Mr. Kruse states he still thinks we need discussion and members should discuss each finding.

Suzanne Davis discussed a way for each finding to be discussed individually and then the board would vote or agree to move forward with the next finding. Mr. Gaumer explained that the Plan Commission findings are different than the Board of Zoning Appeals findings.

Ms. Holt agreed with Ms. Davis and Mr. Kruse while also stating that she appreciates the staff recommended findings due to the knowledge and understanding of the project.

The Board members went on to discuss examples of findings and how we currently go through the process. Mr. VanWye & Mr. Yoder explained how David Kruse would offer his legal opinion and clear up what members would discuss during the findings of fact portion of the hearing. Ms. Holt stated that if Mr. Kruse is observing that board members are not articulating the wording well enough, he can offer his opinion on the language to use.

The Board agreed to try a new way of doing the findings of fact.

Mr. Gaumer stated he would bring the other 2 UDO discussion items on the agenda to the January meeting.

**REPORTS FROM OFFICERS, COMMITTEES, STAFF OR TOWN/CITY LIAISONS:**

Frank Pulver reported on the Garrett Plan Commission meeting and a project with a metal recycling plant off of Fuller Dr., south of State Road 8. Mr. Pulver gave an update on the proposed project.

**COMMENTS/QUESTIONS FROM THE PUBLIC IN ATTENDANCE:**

None

**ADJOURNMENT:**

Jason Carnahan adjourned the meeting at 9:50 a.m.

\_\_\_\_\_  
President – Jason Carnahan

\_\_\_\_\_  
Acting Secretary/ Zoning Administrator – Chris Gaumer

**Accessory Building or Structure (see also Storage Buildings, if applicable):** A building or structure which:

- Is subordinate to a primary building or structure in area, intent, and/or purpose,
- Contributes to the comfort, convenience, or necessity of occupants of the primary building, structure, or principal use,
- Does not alter or change the character of the premises,
- Is located on the same parcel or lot and zoning district zoning lot as the primary building, structure, or use,
- Conforms to the setback, height, bulk, lot impervious surface coverage, and other development standards or requirements of the Unified Development Ordinance unless otherwise provided for,
- May not be constructed prior to the time of construction of the primary building or structure, unless used for agricultural or personal storage or otherwise specified in the Unified Development Ordinance,
- Is not designed for human occupancy as a dwelling or commercial use but may have bathroom, kitchen, sink or other facilities needed for sanitary purposes so long as there is Health Department approval, and,
- In the case of a private/noncommercial telecommunications tower, antenna, or other radio or cellular communications or equipment, the tower, antenna, or other radio or cellular communications or equipment is exempt from accessory structure setbacks. a The subordinate structure (typically considered a cabinet) the use of which is incidental and accessory to that of the principal private/noncommercial telecommunications tower, antenna, or other radio or cellular communications equipment that is detached from but located on the same site shall be considered an accessory structure and must comply with accessory structure setback requirements.
- Exemptions to the accessory structure setback requirements are:
  - Flag Poles, private/noncommercial telecommunication towers, antennas or other radio or cellular communications equipment (except cabinets – see above in Accessory Building or Structure definition), freestanding chicken coops, animal cages/runs, lawn art or lawn statues, water features (except recreational ponds), or other items as deemed exempt by the Zoning Administrator and is not specifically defined in the Unified Development Ordinance.

Definitions:

**Abandonment of Use:** A use that has not been occupied by residing in, doing business in, or what the intended use was by the time set in Article 8 shall be considered abandoned. Proof of occupancy cannot be by proof of maintenance or utility bills, payment of taxes or similar. The Zoning Administrator shall determine if there has been abandonment.

**Legal Nonconforming Building or Structure:** Any continuously occupied, lawfully established structure or building prior to the effective date of the Unified Development Ordinance, or its subsequent amendments, that no longer meets the development standards, unless otherwise noted in Article 8.

**Legal Nonconforming Lot of Record:** Any legally established and recorded lot prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet the lot-specific development standards.

**Legal Nonconforming Sign:** Any sign lawfully existing on the effective date of this Unified Development Ordinance, or amendment thereto, that does not conform to all the standards and regulations of the Unified Development Ordinance, unless otherwise noted in Article 8.

**Legal Nonconforming Use:** Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of the Unified Development Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located, unless otherwise noted in Article 8.

## Article 8: Nonconforming Lots, Structures & Uses

### 8.01 Intent

As new zoning regulations are adopted or zoning map changes are made, lots, structures, and uses that were previously compliant with zoning regulation are sometimes made noncompliant. *Article 08: Nonconformance* specifies the provisions that apply to these legal nonconforming (informally referred to as grandfathered) lots, structures, and uses.

### 8.02 Transitional Rule

Any enforcement action being conducted prior to the effective date of the Unified Development Ordinance for a known or suspected violation of the preceding zoning ordinance and/or subdivision control ordinance shall be continued under the terms of enforcement and penalties of the preceding zoning ordinance and/or subdivision control ordinance, assuming the Unified Development Ordinance does not make what was previously a violation a non-violation (i.e. fully conforming). All other enforcement actions for known or suspected violation shall be conducted using the Unified Development Ordinance.

### 8.03 Distinction Between Conforming, Illegal Nonconforming, and Legal Nonconforming and a Change From Illegal Nonconforming or Legal Nonconforming to Conforming

Each structure, use, and lot is either “conforming” or “nonconforming.” Conforming is used to describe a structure, use, or lot as being in full compliance with the Unified Development Ordinance. Nonconforming is used to describe a structure, use, or lot that is in violation of the current Unified Development Ordinance. Nonconforming structures, uses, and lots are either “illegal nonconforming” or “legal nonconforming.” The following sections determine the nonconforming status of a structure, use, or lot and determines when status changes from legal nonconforming to conforming:

A. Illegal Nonconforming:

1. *Structure*: A structure constructed in violation of the zoning ordinance that was in effect at the time of construction which remains in violation of the current Unified Development Ordinance is an illegal structure.
2. *Use*: A use initiated in violation of the zoning ordinance that was in effect at the time of initiation which remains in violation of the current Unified Development Ordinance is an illegal use. In addition, a use that was legally established that now is not permitted under the current Unified Development Ordinance but has been abandoned or discontinued for a period of at least one year, is an illegal use.
3. *Lot*: A lot established in violation of the zoning or subdivision control ordinance that was in effect at the time of establishment which remains in violation of the current Unified Development Ordinance is an illegal lot.

B. Legal Nonconforming:

1. *Structure*: A structure that does not meet one or more development standards of the Unified Development Ordinance, but was legally established prior to the effective date of the Unified Development Ordinance shall be deemed a legal nonconforming structure. Generally, a structure is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. However, a legal nonconformity may be caused by a governments use of eminent domain or right-of-way acquisition.
2. *Use*: The use of a structure or land (or a structure and land in combination) that was legally established and has since been continuously operated, that is no longer permitted by the Unified Development Ordinance in the zoning district in which it is located, shall be deemed a legal nonconforming use. Generally, a use is rendered legal nonconforming by an amendment to the zoning regulations or zone map change.
3. *Lot*: A lot that does not meet one or more lot standards of the Unified Development Ordinance, but was legally established and recorded prior to the effective date of the Unified Development Ordinance shall be deemed a legal nonconforming lot of record. Generally, a lot is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. Periodically, a legal nonconformity may be caused by a governments use of eminent domain or right-of-way acquisition.

C. The status of an Illegal Nonconforming or Legal Nonconforming structure and/or use may change or become a Conforming structure and/or use if the structure and/or use has been in continual use or existence for 20 years. For example: a parcel that has a small engine or mower repair shop that may be an illegal nonconforming use shall become a legal conforming use if the use is 20 years or older. If the use is 20 years or newer, it shall be deemed in violation of the Unified Development Ordinance.

8.04 Illegal Nonconforming Structure, Use, and Lot

An illegal structure, use, or lot is subject to the enforcement procedures and penalties of the Unified Development Ordinance as amended, unless otherwise noted in this Article.

8.05 Legal Nonconforming Structure

The following provisions apply to a legal nonconforming structure, a structure associated with legal nonconforming uses, and structures associated with legal nonconforming lots that are 20 years or newer:



A. Legal Nonconforming Building Provisions: The provisions for legal nonconforming buildings, a subcategory of structures, are as follows:

1. *Building Expansion*: A legal nonconforming building shall be permitted to expand in area and height as long as the nonconformity is not increased and the expansion otherwise meets the current Unified Development Ordinance. For example, if a building is in violation of the maximum height standard, it can be expanded in area as long as the new addition does not exceed the maximum height standard and is otherwise in compliance with current Unified Development Ordinance.
2. *Building Exterior Alteration*: The exterior walls of a building shall not be moved except as provided in the previous clause. Otherwise, the roof and exterior walls may be maintained, repaired, re-faced, and modified, resulting in the original aesthetic character or an altered exterior character, as long as the building's nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance.
3. *Building Interior Alteration*: Ordinary repair and replacement of interior finishes, heating systems, fixtures, electrical systems, or plumbing systems; and interior wall modifications are not regulated by the Unified Development Ordinance.
4. *Building Relocating*: A legal nonconforming building may be relocated if, by moving the building, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development Ordinance.

B. Legal Nonconforming Structure Provisions: The provisions for legal nonconforming structures, excluding the subcategory of buildings, are as follows:

1. *Structure Alteration*: A legal nonconforming structure shall be permitted to be altered in height, area, mass, and time as long as the nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance. For example, if a permanent sign is in violation of the maximum height standard, it can be altered as long as the alteration does not exceed the currently allowed maximum height standard and is otherwise in compliance with Unified Development Ordinance.
2. *Structure Relocating*: A legal nonconforming structure may be relocated if, by moving the structure, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development ordinance.
3. *Conversion for Longevity*: Converting a structural component of a legal nonconforming structure to a more permanent material in order to prolong legal nonconformity shall not be permitted. For example, a legal nonconforming permanent pole sign would not be permitted to replace its existing wood posts with metal posts even if dimensionally the same size.

C. Loss of Legal Nonconforming Structure Status: The following provisions apply to all types of structures:

1. *Condemned Structures*: If a structure, through lack of maintenance, is declared by an authorized official to be condemned due to its physical or unsafe condition, it shall lose its legal nonconforming status and become illegal nonconforming; unless the structure is restored or repaired within three months of the declaration. The Zoning Administrator may grant an appropriate extension of time if work was started within the initial three month period and reasonable attempts are being made by the owner to remedy the condemnation.
2. *Removal of Permanent Structures*: If a permanent structure is fully or significantly removed or razed (i.e. 80% or more of the exterior walls, structure area, structure height), the remaining

permanent structure shall lose its legal nonconforming status and become illegal nonconforming; unless by significantly removing or razing the permanent structure the remaining permanent structure is in compliance or more in compliance with the current Unified Development Ordinance.

3. *Removal of Temporary Structures*: If a temporary structure is removed (e.g. moved inside, taken off-site, or replaced by a new temporary structure), the temporary structure shall lose its legal nonconforming status and become illegal nonconforming.

4. *Flood*: If a structure is severely damaged from a flood, resulting in a loss of either 50% of its market value or 50% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other flood damaged structures shall be allowed to rebuild the structure that previously existed.

5. *Acts of God*: If a structure is severely damaged from an act of god, excluding flooding, resulting in a loss of either 70% of its market value or 70% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other structures damaged by an act of god shall be allowed to rebuild the structure that previously existed.

D. Maintenance and Repair: Nothing in this section shall be deemed to prevent the maintenance or repair of a structure to keep it in a safe, aesthetic, and functional condition.

#### 8.06 Legal Nonconforming Lot

The following provisions apply to legal nonconforming lots:

A. Legal Nonconforming Lot Provisions: A legal nonconforming lot shall be permitted to be developed as long as the desired structure and use meets the current Unified Development Ordinance. If the application of the current Unified Development Ordinance renders the lot undevelopable (e.g. the current setbacks don't allow a developable building envelope), reasonable variances shall be applied for by the County to the Board of Zoning Appeals for relief.

B. Loss of Legal Nonconforming Lot Status:

1. *Combining Lots Results in Conformity*: If a legal nonconforming lot is combined with an adjacent lot resulting in conformity with the current Unified Development Ordinance, it shall lose its legal nonconforming status. Therefore, future division of the combined lot shall conform to the current Unified Development Ordinance.

2. *Lots in Combination*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner uses both lots in combination for a duration of more than five years, the legal nonconforming lot shall lose its legal nonconforming status; provided the two or more lots in combination would constitute a single conforming lot.

3. *Permanent Structure Across Property Lines*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner constructs a permanent structure across the property line, thus permanently using two lots in combination, the legal nonconforming lot shall lose its legal nonconforming status; provided the two lots in combination would constitute a single conforming lot.

#### 8.07 Legal Nonconforming Use

The following provisions apply to legal nonconforming uses **that are 20 years or newer**:

A. Cross Reference:

1. *Agricultural*: With respect to agricultural legal nonconforming uses, nothing in this section shall be interpreted in a manner that is inconsistent with *IC: 36-7-4-616: Zoning ordinance; agricultural nonconforming use*.

B. Legal Nonconforming Use Provisions: The provisions for legal nonconforming uses are as follows:

1. *Utilizing Existing Enlarged, New or Relocated Buildings*: A legal nonconforming use shall be permitted to occupy or use an existing building, enlarged existing building, newly constructed building, or relocated building, provided the building meets the current Unified Development Ordinance.

2. *Utilizing Existing, Altered, New or Relocated Structures*: A legal nonconforming use shall be permitted to utilize an existing structure, altered existing structure, newly constructed structure, or relocated structure, provided the building meets the current Unified Development Ordinance.

3. *Utilizing Land*: Any legal nonconforming use shall be permitted to utilize its lot, or lots owned in combination upon the effective date of the Unified Development Ordinance, provided the utilization of land meets the current Unified Development Ordinance.

4. *Increase in Nonconformity*: No legal nonconforming use shall be permitted to increase its nonconformity. The size of operation, number of employees, increase to vehicular traffic and similar increases in size does not increase nonconformity of a use. For example, a five acre legal nonconforming junkyard that expands its operations onto five more acres of land it previously owned, does not qualify as an increase in nonconformity, its still a junkyard. However, if the same junkyard adds a compactor facility which previously did not exist, that would qualify as an increase in nonconformity.

C. Loss of Legal Nonconforming Use Status:

1. *Abandonment of Use*: If a legal nonconforming use is abandoned or is discontinued for one year or more, except when a government action impedes access to the premises, it shall lose its legal nonconforming status. Any subsequent use shall conform to the provisions of the current Unified Development Ordinance. [See definition.](#)

2. *Change of Use*: When a legal nonconforming use is changed, altered, or evolves to be in compliance or more in compliance with the current Unified Development Ordinance, the legal nonconforming use status is lost or partially lost. The current use cannot revert back to the original legal nonconforming use or increments thereof.