

**MCHENRY COUNTY BOARD
MINUTES OF THE REGULAR SESSION MEETING
AUGUST 16, 2005**

Chairman of the Board – Kenneth Koehler (District 2)

District 1 Donald R. Brewer Marc Munaretto Anna May Miller Dan Shea	District 2 Marie M. Chmiel James Heisler Kenneth Koehler Lyn Orphal	District 3 Ed Dvorak Ann Kate Nick Provenzano Barbara Wheeler
District 4 Sue Draffkorn John Hammerand Pete Merkel Sandra Fay Salgado	District 5 John Jung Jr. Perry Moy Virginia Peschke Tina Hill	District 6 Ann Gilman Richard Klasen Don Larson Mary Lou Zierer

The Honorable County Board of McHenry County, Illinois met in Regular Session on Tuesday, August 16, 2005.

Chairman Koehler called the meeting to order at 7:00 p.m. The Pledge of Allegiance to the Flag was led by County Clerk Katherine C. Schultz with Members of the Board, department heads and visitors participating. Mr. Munaretto gave the invocation/personal remarks.

ROLL CALL

The roll was called by County Clerk Katherine C. Schultz. The following members responded: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Absent: Hammerand and Larson. Chairman Koehler declared a quorum present with twenty-two (22) members responding. Mr. Hammerand arrived after the roll was called.

MINUTES

Ms. Peschke made a motion seconded by Mr. Shea to approve minutes from the August 2, 2005 County Board regular session meeting. Chairman Koehler asked if there were any corrections. One change was noted and will be corrected.

Chairman Koehler asked for a voice vote, the ayes having it, the motion to approve the County Board meeting minutes of August 2, 2005 are approved.

CHAIRMAN'S REMARKS

Chairman Koehler reported that last week he represented McHenry County along with Mr. Shea, Mr. Jung and Mr. Dvorak at the signing of the Transportation Bill by President Bush. McHenry County was well represented and it was an exciting event. He asked that all of the county board members work on our state legislators to get the money to McHenry County.

Chairman Koehler asked to pull item #12.1 and 15.2 (1) from the agenda at this time. They will be brought back at a later date.

SPECIAL RECOGNITION

None

SPECIAL PRESENTATIONS

Farm Service Administration – Programs & Grants available from USDA

Mary Hook from Farm Services came forward to give a presentation on the programs and grants available from the USDA. Ms. Hook said their agency is one of about 43 agencies within the US Department of Agriculture and their mission is to stabilize farm income and help the farmers conserve land and water resources. They offer loans to new or disadvantaged farmers and to help them through disaster situations. The process of declaring an emergency or disaster was explained. A handout was given and is part of the County Board file.

Animal Control Ad Hoc Committee – Chairman Koehler announced that Mr. Moy will make this presentation. Chairman Koehler thanked all of those involved for their time and efforts put into this report. Mr. Moy explained the report that was handed out and the sections that it included. He stated that Animal Control is solvent and takes in close to \$500,000 through registration fees. The budget for Animal Control nears that number.

The committee made suggestions that might help Animal Control in the future. He said the committee invited Mr. Nathan Winograd through the help of other outside animal groups to talk about the power of public and private partnerships within Animal Control. Many questions were asked and the following conclusion was made. Mr. Winograd shared successes of partnerships located throughout the United States which are helping to save animals. Mr. Moy moved ahead in the report and read about a couple of proposals that were made, one from a community group that would talk about some of the problems that are facing our Animal Control and how they could rectify those problems. They could do this by 1) volunteer policy which would be coming from a third party and holding us non-labile; 2) that they could take over the facility to create a better tempered policy and also to have more adoptable animals.

The other proposal, called the Varga Plan, has three steps. 1) The County Board commits that within two years there will be a new Animal Control Facility; 2) Animal Control remains as a division of the Health Department with the creation of a new sub-division, Adoption Services; and 3) the County Board will oversee and appoint an Animal Welfare Organization that would be in charge of animal adoptions. Mr. Moy said that over the last six months he has received close to 800-1000 calls, letters and personal contacts with respect to Animal Control.

The committee made the following recommendations:

- 1) With public health and safety being the #1 responsibility of the McHenry County Board, the Animal Control would remain with the oversight of the McHenry County Health Department and the Public Health & Human Services Committee.
- 2) Regarding the Corporate Structure, the committee could not come to a consensus whether Animal Control should remain with the Health Board or if it should be a stand alone government division, so no recommendation is made at this time;
- 3) Existing/New Facility – the committee agrees that a new facility is needed as the present facility is outdated, too small and physically challenged.
- 4) Volunteers – the committee agrees that a Volunteer Policy is needed as nothing is in place at this time.
- 5) Public/Private Partnership – the committee agrees that a public/private partnership with respect to the “Adoption” component of the McHenry County Animal Control would be of great benefit.

Mr. Moy stated that there is a contract being reviewed by the State’s Attorney’s office for use at a later date.

In conclusion Mr. Moy said this committee worked hard to try to define the problems and situations and find some kind of solution to those problems. He feels the partnership idea is one to look hard at and would be good for the County.

Chairman Koehler asked for any questions. Mr. Munaretto asked about the proposal of a new facility and where the funds and location for this facility are coming from. Mr. Moy said they do not know where funds will come from; however, there is a community group that has proposed a three year idea that they would raise \$1.5 million dollars to build a new facility for the county if we accept their public/private partnership with a component of Animal Control. There is no preliminary cost of a new facility. The

agreement being proposed is not contingent upon us providing a facility. The location has not been determined. It was pointed out that the number of animals that have been taken in has decreased annually. There was extensive discussion on the possibility of a public/private partnership. It was asked why a contract went to the State's Attorney's office without the board reviewing it first. Mr. Moy said it was his decision as a heads up so as we move forward on this we can begin the discussion factors with the State's Attorney at our side knowing what is trying to be done. He added that he will be making the same presentation to the Board of Health. Chairman Koehler pointed out that this is just a report with recommendations from the Ad Hoc Committee and he thanked Mr. Moy for this presentation.

ZBA CONSENT AGENDA

Chairman Koehler asked if anyone wished to remove any items.

Ms. Gilman asked to remove Petition #05-35; #05-38; #05-39; #05-40; and #05-57.

Mr. Klasen made a motion seconded by Mr. Heisler to approve the following Petitions:

- Exb. #02-100; Coral Twp; Harris Tr & Svgs Bk Trust HTX 7044; reclass A1 to A2
- Exb. #02-101; Coral Twp; Harris Tr & Svgs Bk Trust HTX 7044; reclass A1 to E5
- Exb. #05-28; DunhamTwp; Prince; reclass of A1 to A2
- Exb. #05-43; Coral Twp; Harris Tr & Svgs Bk/Byrne and Lynn; reclass of A1 to A1C
- Exb. #05-59; Chemung Twp; Perkins Dairy Farms, Inc.; reclass of A1 to A2
- Exb. #05-64; Chemung Twp; Perkins Dairy Farms, Inc.; reclass of A1 to A2
- Exb. #05-75; McHenry Twp; Batdorff; reclass of R1 to R1V

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Absent: Larson. The vote being twenty-three (23) aye votes, noting one (1) absent, Chairman Koehler declared the motion passed.

ZBA REGULAR AGENDA

Chairman Koehler asked if anyone wished to remove an item.

Ms. Gilman made a **motion** seconded by Ms. Peschke **to deny** the following Petition:

- Exb. #04-109; Algonquin Twp; Kolker, reclass of A1 to R1V

Chairman Koehler asked for any discussion. Mr. Brewer handed out some pictures for the board to look at and stated that this property was discussed a year ago where it falls in the cracks of property that has been around in the county for a long time. The Kolker property has a structure on in that has fallen in disrepair because of its illegal non-conforming use status and there is nothing that can be done. This petition was filed for the combination of three small non-buildable lots into two lots and then the request to build on the two lots with several variances. He said that Mr. Kolker lives on the property and he would like to fix the property up but he can't. Mr. Brewer recommended that the board vote no on the motion to deny and he will make another motion to allow the zoning change and allow the variances requested so that it can be cleaned up. The neighbors complain all of the time about cleaning up the house yet one woman who spoke said we don't want it cleaned up to where he is going to build houses. Mr. Brewer asked if the vote were approved to deny this petition, does this prohibit him from just getting the variations so that he can fix up the house. Ms. Ehardt suggested that if there is a concern in that regard, that the board can consider splitting the vote. The ordinance references Lot 1 and Lot 2 and you could reference your recommendations to either of those lots. Mr. Kelley of the ZBA said it was not the concern of the board about fixing up the house but it was the addition of the other structures on the property that was the concern. This would be two houses on two lots and the parcels are too small. Mr. Brewer said if this is divided the house would be on new Lot 2. In addition, Mr. Brewer said the Village of Algonquin has agreed to provide water and sewer to the property.

Chairman Koehler asked for a vote on the motion to deny. The following members responded aye: Salgado, Shea, Chmiel, Gilman, Hammerand, Peschke and Koehler. Nay votes: Provenzano, Wheeler, Zierer, Brewer, Draffkorn, Dvorak, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto and Orphal. Absent: Larson. The vote being seven (7) ayes and sixteen (16) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to deny has failed**.

Mr. Brewer made a **motion** seconded by Mr. Provenzano **that the reclassification from the A1 to R1 be allowed for two lots, Lot 1 and Lot 2 on Petition #04-109**.

Ms. Peschke asked what the impact would be by simply allowing the variances and not allowing the reclassification. Ms. Ehardt said that the problem that you would have is that presently the property is zoned AG so the variations that were requested would have needed to have been from larger set back requirements. The properties are not buildable at this time because of the set back requirements that are required under A1 so without the R1 zoning you don't have sufficient variations requested. The point of splitting the vote was splitting the vote on the lots. Mr. Brewer said if you don't split the lots you go back to three small lots. Mr. Hammerand asked if the three lots could be joined together to make one lot, R1. Chairman Koehler said no.

Ms. Gilman made a **motion** seconded by Ms. Wheeler **to postpone** this petition to the next evening meeting, September 20th to go over the issues that have come up and to check the legal description.

Chairman Koehler asked for a voice vote, the ayes having it, the **motion to postpone Petition #04-109 has passed**.

Ms. Gilman said there was no recommendation by the ZBA for Petition #05-07 so a motion is needed from the County Board to approve.

Ms. Draffkorn made a **motion** seconded by Ms. Salgado **to approve** the following petition:
Exb. #05-07; Coral Twp; Harris Bk of Wdstk/Graft; reclass of A1 to E1

Chairman Koehler asked for any discussion. Mr. Brewer said about a year ago the property next door to this one was voted through with no question from A1 to E1. Mr. Klasen said he looked at the property and property next to this one is E5, he feels this is too dense and will cause a burden to all involved if this is approved and he added that Coral Twp has turned down this request. Mr. Brewer disagreed saying there is no E5 zoning around this property. There was continued discussion on the density and the water and hawk issues. Mr. Munaretto stated that in the platting stages of development the hawk issues should be taken care of and engineers will have to work with any water issues, these are not zoning issues. Chairman Koehler noted that Coral Twp did not file an official objection to this zoning change with the county.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Brewer, Chmiel, Draffkorn, Dvorak, Hill, Kate, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Nay votes: Wheeler, Zierer, Gilman, Hammerand, Heisler, Jung, Klasen and Peschke. Absent: Larson. The vote being fifteen (15) aye and eight (8) nay votes, noting one (1) absent, Chairman Koehler declared the motion to approve A1 to E1 zoning has passed.

Ms. Gilman made a **motion** seconded by Mr. Munaretto **to deny** the following Petition:
Exb. #05-52; Riley Twp; Saso; reclass A1 to A1CV

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Absent: Larson.

The vote being twenty-three (23) aye votes noting one (1) absent, Chairman Koehler declared the **motion to reclass from A1 to A1CV has been denied.**

Chairman Koehler advised the board that an objection was filed at the last minute on the Ettner petitions and he needs a motion to declare the objection valid or invalid. The State's Attorney's opinion on this is to not allow this objection to be acknowledged because Article 8, 807.3 of the Zoning Ordinance provides that the protestor must also file a return of service by certified mail to the applicant and the attorney for the applicant, if any, this return of service was not filed. Also, the objection neither alleges nor provides sufficient information that the protesting parties are the owners of the land immediately touching or immediately across the street from at least 20% of the perimeter of the land to be rezoned. These are the reasons we are looking at to deny this objection.

Mr. Munaretto made a **motion** seconded by Mr. Moy **to declare the Objection in Protest against the Ettner petitions invalid.**

Chairman Koehler asked for any discussion. It was asked who the protestors were. Chairman Koehler responded that the firm of Gummerson & Rausch filed the objection on behalf of several land owners in the vicinity. Ms. Gilman added that if this objection was approved it would require a $\frac{3}{4}$ vote of the County Board to approve this petition.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Nay vote: Jung. Absent: Larson. The vote being twenty-two (22) ayes and one (1) nay vote, noting one (1) absent, Chairman Koehler declared the **motion to declare the Objection in Protest against the Ettner petitions invalid has passed.**

Ms. Gilman stated to make things clear that the objectors really only had the possibility of objecting to the two outside parcels, #05-35 and #05-40 with the 20% contiguous land. There was no possibility of objecting to the two inside parcels.

Ms. Gilman made a motion seconded by Mr. Klasen to approve the following Petition:
Exb. #05-35; Seneca Twp; Ettner; reclass of A1 to A2

Ms. Peschke stated she is against this petition because of comments made by Ms. Kooistra in the ZBA report about the Kishwaukee River that runs through this property and the damage that building homes in the area of the river could do to the river. Ms. Wheeler agreed with her comments. Ms. Gilman responded that we do have a Stormwater Ordinance and it has very strong wetland and flood plain regulations that would be enforced. Mr. Munaretto added to Ms. Gilman's comments that he hoped that the petitioner would give some serious consideration to either transferring the development right along the Kishwaukee River or providing for an ample conservation easement, something in addition to what our Stormwater Ordinance provides.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Nay votes: Peschke. Absent: Larson. The vote being twenty-two (22) ayes and one (1) nay vote, noting one (1) absent, Chairman Koehler declared the motion to approve Petition #05-35 has passed.

Ms. Gilman made a motion seconded by Mr. Brewer to approve the following Petition:
Exb. #05-38; Seneca Twp; Ettner; reclass of A1 to A2

Noting no discussion, Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Hammerand, Heisler, Hill, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Nay votes: Gilman, Jung and Peschke. Absent: Larson. The vote being twenty (20) aye and three (3) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to approve Petition #05-38 has passed.**

Ms. Gilman made a motion seconded by Mr. Klasen to approve the following Petition:
Exb. #05-39; Seneca Twp; Ettner; reclass of A1 to A2

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Hammerand, Heisler, Hill, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Nay votes: Gilman, Jung and Peschke. Absent: Larson. The vote being twenty (20) aye and three (3) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to approve Petition #05-39 has passed.**

Ms. Gilman made a motion seconded by Ms. Orphal to approve the following Petition:
Exb. #05-40; Seneca Twp; Ettner; reclass of A1 to A2

Noting no discussion, Chairman Koehler asked for a roll call vote, the following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Nay votes: Jung and Peschke. Absent: Larson. The vote being twenty-one (21) ayes and two (2) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to approve Petition #05-40 has passed.**

Exb. #05-57; Seneca Twp; Harris Bank Woodstock/Gavers; reclass of A1C to A1C

In regard to the above-named Petition #05-57 Chairman Koehler stated that there was a letter sent from Seneca Twp. which he did not receive but was apprised of by the State's Attorney's office because it had been brought forward to Ms. Gilman. Ms. Gilman read the following letter dated August 11, 2005:

'Seneca Township raises an issue concerning the fact that the petitioner (Gavers) did not file its application for renewal more than 120 days prior to the expiration of its current conditional use. As it turns out our zoning ordinance in most cases requires application at least 90 days prior to expiration, however, for gravel pits the time requirement is 120 days. P & D sent a letter to the petitioner stating that the petitioner had until the 90th day rather than the 120th day to file. During the voting meeting of the ZBA this matter was addressed and Sue Ehardt, the Enforcement Officer acknowledged her department's miscalculation of the date and further stated that the rationale for the 120 days was to allow the petitioner sufficient time to complete the process of renewal without an interruption of the conditional use. In other words, the time limit was for the benefit of the holder of the existing conditional use permit. In addition, it would appear that that process of getting the conditional use is identical to the process of starting over, the only difference being the name renewal rather than new. There is no prejudice to objectors since they all got required notices and were allowed to participate. It would be prejudicial to the petitioners to make them start over because of this error that was occasioned in part by action of the county. Therefore it is more than reasonable at this time for the board to move that the failure of the petitioner to meet the 120 day requirement be waived.'

Ms. Gilman reiterated that the 120 days is so that the petitioner has enough time since it is a renewal for the process to continue through the ZBA hearings to get to the County Board so that their conditional use does not expire and they are forced to stop work. This is so there is a seamless renewal. Chairman Koehler said he believes that we need a motion to waive, and he does have an oral opinion from the State's Attorneys office that this waiver would be valid.

Mr. Brewer made a point of order stating that this is a zoning board decision not a County Board decision. He said we are like the Appellate Court it has nothing to do with us; if it's jurisdictional that's a different issue, we can not take it up. Ms. Gilman said it is our zoning ordinance but Mr. Brewer rebutted that it doesn't matter whose ordinance it is, we gave authority to the ZBA.

Although Ms. Gilman feels it is not necessary to waive this as per Mr. Brewer's comments she will make a motion. This will make it clear that we understand the issue and are going to proceed.

Ms. Gilman made a motion seconded by Ms. Chmiel to waive the 120 day requirement.

Chairman Koehler asked for any discussion. Mr. Moy said he is against this because he feels the petitioners did not do their due diligence with respect to our ordinances and the homeowners and protesters were not allotted the correct amount of time to attend the hearings or object to the conditional use permit. Ms. Chmiel disagreed with Mr. Moy's comments as the hearings were adequately posted so the protesters did have time to voice their objections. Ms. Gilman noted that had this been a new petition there would not have been the 120 day requirement. The ZBA understood this issue and decided to proceed with the hearing and felt that this was not an issue. Mr. Kelly of the ZBA stated that the 15-30 day notice requirements would be the same no matter when the actual petition was filed and we always treat all of the hearings as if we go through all the standards for whether they are a new request or renewal and this had actually new issues that were raised that were all treated as a new conditional use itself. Ms. Ehardt reiterated that the applicants did have due diligence on their part, it was a mistake on the part of her department when they recalculated the time frame it was their decision it was timely. The conditional use presently exists until the 18th of this month so they are still timely in terms of renewing a conditional use. If this is voted on this evening there is no need to cease operations, it all is timely.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Chmiel, Draffkorn, Dvorak, Gilman, Heisler, Hill, Kate, Klasen, Merkel, Miller, Munaretto, Orphal and Koehler. Nay votes: Wheeler, Zierer, Brewer, Hammerand, Jung, Moy and Peschke. Absent: Larson. The vote being sixteen (16) ayes and seven (7) nay notes, Chairman Koehler declared the **motion to waive the 120 day requirement on Petition #05-57 has passed.**

Ms. Gilman made a motion seconded by Mr. Brewer to approve the following Petition:
Exb. #05-57; Seneca Twp; Harris Bk. Wdstk/Gavers; reclass of A1C to A1C

Chairman Koehler asked for any discussion. Mr. Brewer asked if the 120 days in our zoning ordinance is jurisdictional. Mr. Brewer stated that if it's jurisdictional, it doesn't matter who made the mistake, it can not be waived. Mr. Stone and Mr. Carroll said the State's Attorney's office is not prepared to answer that tonight. Chairman Koehler said that everything he has heard so far, we are in compliance. Mr. Brewer added that if we do vote on this tonight and it passed and we find out it is jurisdictional the vote is null and void.

Mr. Brewer made a **motion** seconded by Ms. Miller **to amend** the original petition, Condition #22. Presently Condition #22 states all vehicles leaving the property with concrete shall be owned by the owner/operator of the property. He would like this amended **to read: all vehicles leaving the property with concrete readymix shall be owned or leased by owner/operator of the property.**

Chairman Koehler asked for a roll call vote on the amendment to Condition #22. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke

and Koehler. The vote being twenty-three (23) aye votes noting one (1) absent, Chairman Koehler declared the **amendment to Petition #05-57, Condition #22 has passed.**

Back to the main motion, Chairman Koehler asked for any additional discussion.

Mr. Hammerand made a **motion** seconded by Mr. Jung **to amend** Petition #05-57 Condition #18 to **add: any operations that continue on this site shall assume responsibility for the maintenance of Rose Farm Road from the site entrance to Kishwaukee Valley Road in like conditions to that of the remaining parts south of Rose Farm Road. Further, a Performance Bond for not less than \$60,000 shall remain in effect until all operations cease and the Seneca Twp. Highway Commissioner has inspected final maintenance work and given a written release that the petitioner is no longer responsible for such maintenance.**

Chairman Koehler asked for any discussion on the amendment. Ms. Hill asked Ms. Ehardt if a performance bond was common practice. Ms. Ehardt said no not for this type of condition. Performance bonds or letters of credit are received for reclamation on earth extraction operations or on subdivision improvements. Ms. Hill asked if any complaints have been received on the upkeep of the road. Ms. Ehardt said she has not received copies of the complaints that the road commissioner had indicated he had sent. Added to this condition is that if there is written notice sent that copies also be sent to her so that she can ensure that follow up of the roadwork is done. In Ms. Ehardt's opinion the condition that has been provided to the ZBA which they have recommended to the County Board is sufficient.

Ms. Gilman made a **motion** seconded by Mr. Hammerand **to amend the amendment** by making the following change: the third line up from the bottom would add the following language: and the Seneca Twp. Highway Commissioner and County Highway Engineer have inspected final maintenance and repair work on said portion of South Rose Farm Road.

Chairman Koehler asked for any discussion on the amendment to the amendment.

Ms. Peschke asked why the county would be doing anything on a township road. Mr. Korpalski asked for an opinion from the State's Attorney on what are we clarifying for damage to Rose Farm Road. This is an open ended statement that is not fair to the property owner. Mr. Brewer said he didn't think we could extract anything from #18 as it is a government road.

Chairman Koehler asked for a voice vote on the amendment to the amendment, the nays having it, the **motion to amend the amendment** to include the county in checking for damage to the road **has been denied.**

Chairman Koehler asked for any other discussion to Mr. Hammerand's amendment to add a clause to Condition #18 regarding the performance bond. Mr. Hammerand said this bond gives them the ability to repair the potholes and charge them. Mr. Shea responded that it currently says that the Seneca Twp Road Commissioner can post the road which in effect could shut down the business, which is more severe than messing with a bond.

Chairman Koehler asked for a roll call vote on Mr. Hammerand's motion to amend #18 which is to provide a performance bond for not less than \$60,000 to the Seneca Twp Highway Commissioner. The following members responded aye: Wheeler, Hammerand, Jung and Peschke. Nay votes: Provenzano, Salgado, Shea, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Heisler, Hill, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal and Koehler. Absent: Larson. The vote being four (4) ayes and nineteen (19) nay notes noting one (1) absent, Chairman Koehler declared the **motion to amend has failed.**

Chairman Koehler asked for any discussion on the main motion.

Mr. Provenzano made a **motion** seconded by Mr. Brewer **to remove Condition #18 from Petition #05-57.**

Chairman Koehler asked for any discussion. Mr. Provenzano said he would like to hear from the State's Attorney's office if it is legal to instruct a private party to go onto public roads and repair them. Mr. Stone said he is not prepared to give an opinion on this at this time. Ms. Gilman asked why we would remove something that the petitioner has agreed to, we have private parties fixing public roads all of the time. Ms. Ehardt has the power as Code Enforcement Officer to shut the business down if the road is not maintained.

Mr. Hammerand made a **motion** seconded by Mr. Dvorak **to postpone a vote on Petition #05-57 to September 20th.**

Chairman Koehler asked for any discussion on the motion to postpone. Many board members felt that the vote should not be postponed as the petitioner has provided the evidence necessary for the board to make an informed decision. It was asked if the Conditional Use Permit would carry on. Ms. Ehardt said that because the petition has been submitted to the board this evening and it is timely as the CUP is still in effect until September 18th, if the board deems a postponement she would say that they can continue to operate until the board acts upon their petition.

Chairman Koehler asked for a roll call vote on the motion to postpone. The following members responded aye: Dvorak, Hammerand and Moy. Nay: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Gilman, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Munaretto, Orphal, Peschke and Koehler. Absent: Larson. The vote being three (3) aye and twenty (20) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to postpone has been denied.**

Chairman Koehler asked for any other discussion on the amendment to remove Condition #18. Several members of the board disagreed that this condition should be removed as the road has always been taken care of. Mr. Munaretto questioned the last sentence in Condition #18 which appears to place the county in the position of empowering the Seneca Twp Highway Commissioner to post the road if the repairs are not done. He wondered if this was legal. The State's Attorney didn't know for sure. Mr. Brewer agreed with Mr. Munaretto stating this is not an agreement we are passing it is an ordinance.

Chairman Koehler asked for a roll call vote on the **motion to remove Condition #18.** A yes vote would be to remove it and a no vote would be to leave the condition as it is. The following members responded aye: Provenzano, Brewer, Dvorak, Hammerand and Moy. Nay: Salgado, Shea, Wheeler, Zierer, Chmiel, Draffkorn, Gilman, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Munaretto, Orphal, Peschke and Koehler. Absent: Larson. The vote being five (5) aye and eighteen (18) nay votes, noting one (1) absent, Chairman Koehler declared the **motion to remove Condition #18 has been denied.**

Chairman Koehler asked for any discussion on the main motion to approve Petition #05-57.

Chairman Koehler read from the McHenry County Zoning Ordinance about application for the renewal of a Conditional Use Permit. Mr. Kelly said that the ordinance directs whether they can operate once they are expired, it does not say that the hearing is invalid. Ms. Peschke was concerned about the possible jurisdictional issue that Mr. Brewer mentioned. Her concern would be the possibility of having to revoke the vote that has been taken. Ms. Ehardt said the only thing this paragraph is referencing is whether or not the operation can continue if their conditional use expires and there has not been action by this board.

Chairman Koehler asked for a roll call vote on the motion to approve Petition #05-57. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Absent: Larson. The vote being twenty-three (23) ayes noting one (1) absent, Chairman Koehler declared the **motion to approve Petition #05-57 has passed.**

PLATS: None

PUBLIC PARTICIPATION

Chairman Koehler explained the rules of public participation. The following persons spoke:

Bill Cerikus	regarding Ackman extension
Ron Ross	regarding Ackman extension
Cecilia Brown of Animal Outreach	regarding Animal Control

Noting no other persons wishing to speak, Chairman Koehler closed this section of the meeting.

NEW AND UNFINISHED BUSINESS

Resolution authorizing the retiring Executive Director of the Mental Health Board to convert prior out-of-state service time into service credit under IMRF (presented as a minority report)

Chairman Koehler pulled this from the agenda.

APPOINTMENTS

Ms. Hill made a motion seconded by Mr. Heisler to approve the following appointments:

Community Development Block Grant Commission (CDBG)	
Kimberly J. Larson (District 5)	term to expire 7/31/2007
Rosemary Kurtz (District 2)	term to expire 7/31/2007
Craig Hubert (District 6)	term to expire 7/31/2007
Kay Burrill (District 1)	term to expire 7/31/2007
Robert Martens (District 4)	term to expire 7/31/2007

Mr. Shea said the person who was to be appointed from District 3 had moved. Another person has been recommended and it has not gone through the channels yet.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Nay votes: Brewer and Klasen. Absent: Larson. The vote being twenty-one (21) aye and two (2) nay votes, noting one (1) absent, Chairman Koehler declared the motion passed.

ROUTINE CONSENT AGENDA

Chairman Koehler asked if anyone wished to remove an item from the agenda. There were none. Mr. Shea made a motion seconded by Ms. Gilman to approve the Routine Consent Agenda.

Chairman Koehler asked for a roll call vote. The following members responded aye: Provenzano, Salgado, Shea, Wheeler, Zierer, Brewer, Chmiel, Draffkorn, Dvorak, Gilman, Hammerand, Heisler, Hill, Jung, Kate, Klasen, Merkel, Miller, Moy, Munaretto, Orphal, Peschke and Koehler. Absent: Larson. The vote being twenty-three (23) aye votes noting one (1) absent, Chairman Koehler declared the motion passed.

ORDINANCES

Ordinance reauthorizing the amendment to Article XVII of the McHenry County Public Health Ordinance (waiver of 30 day review requested)

Chairman Koehler removed this from the agenda.

ADMINISTRATOR'S REPORT

Mr. Austin said he has talked to several of the board members about the prospect of McHenry County entering into a formal relationship with a legislative consultant or a lobbyist in Washington D.C. With the success of the transportation bill we see the benefits of what coordinated work can do in Washington in bringing more money to the county.

EXECUTIVE SESSION: None

MEMBERS' COMMENTS

Ms. Gilman asked about the feral cat ordinance and why it was pulled. She felt that there must be something to report after 18 months of the program. Chairman Koehler responded that it is his understanding that we are waiting for a report. Ms. Peschke stated that the Public Health and Human Services Committee thinks that a year extension is too long to continue, they have recommended a continuation of 3 months on a trial basis and then make a decision whether to make it permanent or not. Ms. Wheeler stated that the Board of Health had this on their agenda at the last meeting in July and it was discussed. In summary of information of a report that was in the Board of Health packet, the information was not always received at the due date, there were changes and it was inconsistent. Ms. Wheeler asked that Mr. McNulty or the Board of Health come in and give a presentation on the data that they do have and give some direction as far as where the program is going and if they can ever comply with the ordinance.

Mr. Merkel commented about the Federal Legislative Program and said if other members have ideas or thoughts on programs that we should include in our discussions we should talk with Mr. Austin.

Mr. Brewer thanked Ms. Hill for a wonderful time at her 25th anniversary party as did Ms. Gilman.

ADJOURNMENT

Mr. Heisler made a motion seconded by Ms. Chmiel to adjourn at 10:10 p.m. Chairman Koehler declared the motion passed on a unanimous voice vote.

Dated and approved at Woodstock, Illinois this 20th day of September, A.D., 2005.

S/ Kenneth D. Koehler
Kenneth D. Koehler, Chairman
McHenry County Board

ATTEST:

S/ Katherine C. Schultz
Katherine C. Schultz, County Clerk