

SITING, RULES & ORDINANCE SUB-COMMITTEE MEETING
June 18, 2013
5:30 P.M.

MEMBERS PRESENT

Jerry Potts
Tim Dudley
Susanna Zimmerman

COUNTY PERSONNEL PRESENT

Jennifer Hoffman, Director P&Z
Mike Baggett, State's Attorney's Office
Jeannie Durham, County Board Office

Meeting was called to order by Chair Jerry Potts at the Macon County Office Building.

MINUTES

Motion to approve the minutes of prior meeting (12-13-11) made by Susanna Zimmerman, seconded by Tim Dudley, and motion carried 3-0.

CITIZEN'S REMARKS

None

OLD BUSINESS

None

NEW BUSINESS

Macon County Ordinance Approving Amendments to the Nuisance Ordinance

Jennifer Hoffman explained that Macon County needs to address abandoned/ derelict vehicles in subdivisions. Under the current nuisance ordinance an abandoned vehicle has to meet 3 criteria:

1. The vehicle has to be on the premises for 60 days or more
2. The vehicle has to be wrecked, scrapped, ruined, partially dismantled, or inoperative
3. The vehicle has to display invalid licensing.

The problem we are running into is that these vehicles will meet two of the criteria and not the third. Therefore Macon County can't classify them as abandoned vehicles.

So a citizen can have 5 vehicles on their property for 2 years and they have an invalid sticker but the vehicle is physically in good condition and we can't do anything about it. These kinds of conditions are not only in subdivisions but also in the rural areas. However in the rural areas we don't have that many complaints. I feel these changes need to be made because it is not fair to citizens of Macon County to have to look at a junkyard next door to them and Macon County has no control over this. If you look, I attached some color pictures of the complaints that we have not been able to pursue to prosecution because of the ordinance. As you can see these are all over the county in different townships but they are ALL within subdivisions in Macon County.

I am a member of Illinois Association of County Zoning Officials so I sent out an e-mail to get feedback on this topic from surrounding counties and how they handle these situations. There is no sense in reinventing the wheel. I heard back from DeKalb County, Jo Daviess County, Washington County, Logan County and Rock Island County. I compiled their input and came up with the changes that are in the presentation in front of you. I have sent these changes to Mike Baggett at the States Attorney's office and he has approved them too.

We added and changed some definitions. For example, abandoned vehicle now gets only 7 instead of 60 days. Debris no longer includes abandoned or derelict vehicles. We added that if there are two or more inoperable or unlicensed vehicles, then it is classified as a junkyard. Back to the Zoning Ordinance, you cannot have a junkyard in residential zoning. Category 2 on inoperable and abandoned vehicles is being added.

Jerry Potts questioned Category 2, section b in regard to placement of the vehicle or parts thereof upon jacks, chains, or other supports. If a guy is doing a little work on his vehicle, would it be necessary to have a 15 day leeway there too? Jennifer stated that she had no problem with someone wanting to work on their vehicle such as backyard maintenance, but there are people who operating a business out of their house. When they get a nuisance violation, they say, "oh, no. I'm not operating a business." There are a lot of cars going in and out of there. I don't want to make it too lenient. I'm trying to get some teeth on this thing. Mike Baggett said that the way it is worded, it would give the county the authority to determine that any vehicle seen up on blocks or jacks, that it would be potentially seen as an inoperable, abandoned vehicle. The language, "no owner shall store, accumulate, discharge, deposit, dump or place any abandoned, derelict vehicles on any premises under the following conditions . . ." That is broad enough that you may have an argument that putting a car up on a jack to change the oil for 15 minutes, if someone were to drive by, they could call it an abandoned vehicle under the definition. It may be something that we could add in language. I was reading this in conjunction with the definition section and maybe it would be worth it to restate this again in the Category 2 about the 7 consecutive days. If the same vehicle is in the same condition for 7 consecutive days, I think there is a stronger argument that it's abandoned or derelict. There is also a stronger public policy argument as to why we would want to prohibit that kind of conduct as opposed to someone simply doing it for a very short amount of time. I don't know that the County wants to get into the business of prohibiting short duration putting cars up on blocks. We can just add that language in to Category 2 and make it clear that we are only talking about these situations where this condition lasts for a minimum of 7 consecutive days. There would have to be, of course, verification of this. Being worded 7 consecutive would mean that someone would have to be able to state under oath, "I observed this on 7 consecutive days and it was in the same condition on every one of those days." It wouldn't be, "I saw it a week ago, and I am seeing it today in the same place." That may not be enough to satisfy the ordinance. If we are looking to enforce it this way, it would have to be a continual inspection day after day. Jennifer clarified that Mike was indicating that she would have to go out there every day and do an inspection. Mike confirmed that as a prosecutor in front of a judge, it would make me feel a lot better presenting evidence if I had that to go on. Otherwise, I'm trying to convince the judge that you saw a week before and week hence and it is in the same position. Circumstantially, that is good enough evidence that might convince the judge, but if I got you on the stand and you're saying you saw it every single day. Jerry stated that the reason he had come up with the 15 days is that in the abatement section, it says 15 days. Do we need to change that? Mike explained that the abatement would only take place after discovery of the violation. In the event that Jennifer does a drive-by inspection and sees a vehicle which is up on blocks and she sees it maintains that state for 7 days. Then, on day 7 or day 8, she can send a letter to the owner of the property saying the nuisance has been observed and you have 15 days from this point to abate the nuisance or we will prosecute. Once they receive that letter, then in 15 days after the letter is when the fines of \$50 to \$500 per day of continuing violation start ticking. That is up to the judge

after I get done with it. The 15 days and the 7 days are not the same days, they are one right after the other.

Jerry's next question was about info on page 4 about the storage of trucks, tractors, machinery, etc... being state statute so we can't change it to principally for agriculture? Jennifer said no, she was told by Randy Waks that it is State Statute. Mike agreed that we can't change that. The State Statute will control that and the county does not have the power to go against that in any way.

Tim Dudley made a comment that going to the vehicle portion in subset A, it says absence of an effective registration plate or without current registration sticker. If someone is changing the oil on a car, it would probably have a valid plate on it. Also, the safeguard would also kick in where it says the vehicle has lost its character. If they are just changing oil, I'd say the vehicle probably still has some character or they'd ship it off to the junkyard. I think there are plenty of safeguards in here that would cover that. You might get some crazy neighbor who just wants to cause trouble and say, "hey, that car has been sitting there for 7 days.", but that's where Jennifer uses discretion. There is some discretion there that can be used on Jennifer's part, so I'm pretty ok with this. The point is that you could have this ordinance 2 inches thick and there will always be somebody who will try to find some little gray area. Jerry said that is why language is so important. Jennifer said that is why she finds the loopholes she does now and why she wanted to change the ordinance.

Jerry's next question was whether most of the people are repeat offenders. Jennifer said that yes some of them are. Jerry pointed out the first picture and said that the vehicles looked to him to be workable. Jennifer said they don't have tags on them and they've been there for over 60 days. Jerry asked about the second picture. Jennifer said the truck has been sitting for 2 years and does not have proper license on it. The camper is the same way. Jerry said that if these people would put the vehicles in a garage, there would be no problem. Jennifer agreed that there would then be no issues.

Tim asked if a vehicle has a proper tag on it, if it was ok. He stated he could think of one instance where a guy had a huge motorhome in an alley that used to be a utility alley but was given back to the property owners that sat there with the tires sunken into the ground, but because he put valid stickers on it, he said he was in compliance with the law. Jennifer said that would be a case where the 7 days comes in. Mike said the sticker is just one way of determining whether the vehicle is abandoned or derelict. It is the most obvious way, but so is 4 flat tires sinking into the ground. That will be something that Jennifer will have to deal with, but that would only be one mechanism she would have. That is why the ordinance goes into greater detail regarding the definition of an abandoned vehicle and Category 2 trying to define exactly what it takes. Looking at this now, the first sentence should probably read, "under any one of the following conditions" as opposed to "under the following conditions". If it says under the following conditions, it could be read to mean that you have to have all four of them before it applies. I think that would make it very clear that it is not just a bad sticker. Jerry commented that he still has a little concern. Not everybody has a new vehicle. So, if I was taking the motor out of my truck and had it jacked up or something, I surely wouldn't want someone to just come by and say, "here's your fine". I don't really want to leave it to the discretion of, maybe not Jennifer, but the next person down the road. Mike stated that, first, the vehicle would have to be there for 7 days and Jennifer would need to be able to verify that to me. She can't come out and hand you a ticket and say, "here's a fine". What

she does is record the violation, draw up a report, and refer that to me in the State's Attorney's Office. That is her discretion as to whether or not it gets sent to me. If it gets sent to me, I have the discretion as a prosecutor as to whether or not I am going to file the violation. At that point, there is discretion of two people as a check and balance on each other. If I file the ordinance violation, it goes to Judge Webber's courtroom. If the defendant denies the allegations and we have to fight about it, it is ultimately up to Judge Webber as to whether or not the person is held in violation and ordered to pay a fine. So, it is a much more involved process than Jennifer noticing a violation, calling in the violation and handing out the citation. It is not quite as simple as what the city or county can do with traffic tickets. Tim said they still have the 15 days to correct the situation before it even goes through that process. That gives them 3 weeks. Mike confirmed. Jennifer said that many times they call in and explain that they, for example, are changing a motor and will be done soon, but just need an extra week. I'll work with them as long as they keep us informed. Tim said that realistically, they really should not be changing out a motor in a front or back yard of a home, but we're really giving them 3 weeks. Mike said it is important to note that when Jennifer sends the letter out, they've got 15 days to abate. Jennifer will be in contact with them during that period. Again, she has the discretion of extending that 15 day abatement period if necessary because sometimes you cannot move a vehicle that easily especially if you don't have the money to pay someone else to do it right now. So, in her discretion, if she wants to extend that period, that is fine. Once it gets turned over to me, I am inclined to work with people. I think Jennifer and I have had enough of these come up and had enough discussions, that our goal is compliance as opposed to penalizing people. If we can get them to comply with the ordinance, and if we have to scare them a little to make it happen, that is fine, but if we can just get them to comply, we are not as interested in making them pay. That is how we are coming down on it.

Tim Dudley made a motion to approve sending the ordinance on to the EEHW committee with the recommendation to approve with the changes in wording recommended by general counsel on the section right before a. in Category 2 where the wording "any one of the" and the "7 consecutive days" will be added, seconded by Susanna Zimmerman and motion carried 3-0.

CLOSED SESSION

None

OLD BUSINESS

None

ADJOURNMENT

Motion to adjourn made by Tim Dudley, seconded by Susanna Zimmerman, motion carried 3-0, and meeting adjourned at 5:55 p.m.

Minutes submitted by Jeannie Durham
Macon County Board Office