

Zoning Board of Appeals Public Hearing Monday, April 9, 2018 6:00 PM

A Public Hearing of the Zoning Board of Appeals was held at Fairbury City Hall at 6:00 p.m. on Monday, April 9, 2018. Members in attendance were Zoning Administrator & Secretary to Zoning Nancy Widlacki, Zoning Attorney Jay Goold, Zoning Chairman Gerry Vance, Zoning Board members Jim Tipton, Sam Pica, John Gavin, Seth Welch, Roger McDowell and Tom Bull. Also attending was City Superintendent Brett Ashburn.

The public in attendance were in-ground pool owners David Slagel and Darin Bazzell.

The public hearing was held at the request of Mayor David Slagel and the City Council of the City of Fairbury to discuss pool safety covers for in-ground swimming pools. Currently, the Zoning Code mandates all automatic pool covers be inspected yearly by a certified installer. Mayor Slagel has determined there is no such thing as a certified installer.

Chairman Vance asked Zoning Secretary Widlacki to read the changes that Mayor Slagel has proposed which includes Section 5.7, G 4 (B) Be mechanically operated by a key, ~~keypad or other such device as to prevent the cover from being drawn open or retracted except by authorized person(s) or key and switch such that the cover cannot be drawn open or retracted without the use of a key.~~ Section 5.7 G 4 (F) These devices shall be inspected yearly ~~by a certified installer.~~ Inspection reports certifying the covers to be safe and properly functioning shall be submitted by the homeowner yearly to the City of Fairbury prior to operation of the pool. The inspection report is to be completed and submitted to City Hall by June 1 of each year. When June 1 falls on a Saturday or Sunday, reports must be turned in by the close of business on the next business day.

Chairman Vance asked Mayor Slagel if he had anything more to add. Mayor Slagel asked the Zoning Board of Appeals members to consider striking (F) altogether from the Zoning Code. He learned the International Code Council and the Association of Pool and Spa Professionals developed a set of swimming pool related codes called the International Swimming Pool and Spa Codes (ISPSC). Many municipalities and states have adopted these codes for cases just like this. The International Code Council has a panel of experts that come up with the code and goes through their due-process for a final determination by building code officials who have hands-on experience with the International Code Council (ICC). The first ISPSC code written in 2012 was adopted by many cities, states, counties, etc., and allowed for automatic pool covers in lieu of a fence for in-ground spas but did not mention pools. An updated code of the ISPSC was released in 2015 that allows for automatic pool covers in lieu of a fence for all in-ground pools and spas. This code has been adopted by 9 of the 50 states. Illinois adopted the 2012 version but not the 2015. The barrier section of the code exempts covers that meet regulation ASTM F1346.

Board member Bull asked how the City would know if a cover was operational without an inspection. Mayor Slagel's response was "the same way they know everything else". Bull stated the responsibility would fall upon the homeowner to make sure the cover was fully functional. Chairman Vance asked if the other states and cities had building inspectors on staff but Mayor Slagel didn't know. Board member McDowell said Hudson requires a fence and a cover but an inspection is not required. ZA Widlacki polled 7 local communities. 6 out of 7 require fences regardless of the cover.

Mayor Slagel said when a state adopts the ICC's 2015 ISPSC, a trickle-down effect happens whereby counties and municipalities must adhere to the ISPSC code. Mayor Slagel explained

the mechanics of the cover comparing the cover to a waterbed. He showed a photo of several people standing on a cover. Member McDowell asked the Mayor if he has his pool winterized and if so, who does the work. Mayor Slagel said he does a little and the pool company does a little. Member McDowell asked if the pool company, while closing the pool, looks at the cover. Mayor Slagel said they can.

Member Tipton asked if the cover was closed when the pool was not in use. Mayor Slagel said yes, it has to be closed to provide safety. Member Tipton asked about debris accumulating on the pool cover and yes, leaves and other yard waste does accumulate so it is to the pool owner's advantage to keep the pool cover closed. Chairman Vance asked about heat generating in the pool while the cover is closed during the summer. Mayor Slagel said he has a heat pump he uses if it gets too hot. Member Bull asked if the bottom line is that Mayor Slagel is asking the Zoning Board of Appeals to do away with the inspection process. Mayor Slagel said ideally, yes. Member Bull then asked Attorney Goold since the inspection process was already in place and if the Zoning Board of Appeals makes the recommendation to eliminate it, what legal ramifications does that present for the City. Attorney Goold said that would be a question for the City's insurance company. Member Bull added that if the ZBA recommends to completely strike the inspection process, does it fall back on to the ZBA. Chairman Vance said it falls on the City Council. Chairman Vance said he's been hearing from Mayor Slagel for a year that there is no such thing as a certified installer and asked Darin Bazzell if he has had problems finding someone to come and inspect his cover. Darin said yes. Chairman Vance said the Zoning Administrator has a file full of inspection letters from pool owners. Chairman Vance acknowledged that the covers are a safety feature when closed. Member Tipton said a 4' high fence, self-closing and self-latching gate is required for above-ground pools but nobody inspects those because of the lack of a Building Inspector. Member Gavin said he has noticed several above-ground pools without fences. Member McDowell noted Backyard Pool & Spa says life expectancy of automatic pool covers is 15 years. Darin Bazzell replaced his at the 10 year mark. Mayor Slagel's cover has a 10 year warranty on the material and lifetime warranty on the mechanics. Member Welch asked how the tracks are inspected. Mayor Slagel said it depends on the pool cover and the way it was installed. A lengthy discussion ensued regarding the mechanics of the tracking systems. ZA Widlacki asked if the cover malfunctioned while the cover is open, can the cover be closed. Mayor Slagel said yes, by using a hand crank. Chairman Vance had lined up a gentleman from a pool cover store to attend the meeting but he was unable to attend. The discussion continued at length about mechanics and safety of pool covers.

Member Gavin said because the City does not have a Building Inspector, his opinion is the inspection report should remain in the code. Member Bull commented that it all falls to legality. Chairman Bull asked if a child were to drown in a pool today with our code intact, would the City be liable. Attorney Goold said probably not. City Superintendent Ashburn said he thought if the City turned the responsibility over to the pool owner, there would be less liability. Darin Bazzell said the City has lots of ordinances where there is no inspection process in place and his feeling is that in-ground pool owners are being singled out. ZA Widlacki explained the Contractor Certification Compliance form to Darin. When a new construction building permit is applied for, this form accompanies the packet of information as it replaces a Building Inspector that the City of Fairbury does not have on staff. The general contractor, all subcontractors and the homeowner sign this form stating their compliance with the ICC codes and the zoning codes of the City of Fairbury at the time of construction. The conversation continued at length with comments and questions from several board members. Member Gavin asked if there were any penalties in the code for people who violate the building permit process and the ZA answered affirmatively. He then asked if there could be penalties added for in-ground pool owners who don't comply. Attorney Goold said the penalty would be a dead kid. An open body of water is a magnet to a child. Mayor Slagel argued that it's been shown over and over that the covers are

better than a fence in this situation and Attorney Goold said he isn't arguing that point. His point was that a building going up would not attract a small child the way a swimming pool would. Member McDowell explained his family has rules in place where the children are not allowed in the pool without a parent present. Attorney Goold agreed but said we are talking about the strange kid that happens by the open pool. Mayor Slagel said this is where the cover is more effective and Attorney Goold agreed, if the cover is closed. Chairman Vance asked the Mayor what his response would be if the City drove by his home and saw the pool uncovered, what should the City do and Mayor Slagel said he couldn't say except that whatever the City would do to the homeowner who's gate was hanging open, the consequence should be the same. Dialogue continued with a lot of comments. Chairman Vance said he doesn't understand why pool owners wouldn't want a nice fence around their pool. Mayor Slagel said they chose to go with a "green" fence. ZA Widlacki said her goal is to reduce the liability to the City of Fairbury. Member Tipton said in his opinion, the more the City requires, the more the City is creating liability for its citizens. City Superintendent Ashburn suggested a form be completed by each pool owner at the time the pool is constructed that says that pool owner will take full responsibility for the cover. Member Gavin asked what the consequences are for the pool owner that doesn't have a working cover or gate and no fence. Mayor Slagel said the pool owner would no longer be in compliance and would have to put up a fence or remove the pool.

In-ground pool owner Greg Bazzell arrived at 7 p.m. Greg's opinion is that anybody can tell if their garage door is working properly and the same is true for the automatic pool cover. ZA Widlacki agreed but stated a broken garage door is not detrimental to the public. Member McDowell made a motion to accept the verbiage Attorney Goold had provided but the conversation continued and a 2nd to his motion was never made. Member Pica said the City is imposing on property owners things the property owners should be taking care of and Member Gavin rebutted with some owners don't take responsibility. Darin Bazzell said as a pool owner, he wants to make sure his equipment works. Member Bull stated the pool owners in attendance at this hearing are responsible pool owners. Greg Bazzell said his worst nightmare is coming home to find a neighbor kid in his pool. It is imperative pool equipment is working properly. Mayor Slagel said in-ground pool owners are much more heavily invested in the pool than the blue blow-up pools from Walmart. Members Pica and McDowell discussed the homeowners' ability to perform an inspection on their pool cover. Mayor Slagel said if the ZBA still wanted inspection reports, he doesn't see any problem with that but it is something the homeowner can do. Mayor Slagel said after seeing the ICC report, he feels the inspection report is unnecessary. ZA Widlacki asked if the Board wanted to table the hearing and do research since there was so much discussion. Mayor Slagel said he thought the Board was on the right track and it's just a matter of getting the correct wording. Chairman Vance stated the way the code is currently written, it is very easy for a homeowner to install a pool cover in lieu of a fence. He went on to add that all the City is asking is that pool owners have the cover inspected and bring the report to City Hall. Darin Bazzell said he is a general contractor and he feels he has the knowledge to be able to inspect his pool cover and complete the report to satisfy the Zoning code but with the way the code is written now, he isn't allowed to do that. He has to pay someone to do the inspection. The conversation continued for several minutes.

Chairman Vance stated the board did not need to make a decision that evening; the hearing could be tabled and resumed in 2 weeks to give members an opportunity to do their own research. Member Bull said perhaps the ZBA should defer to the City Council. He went on to say that no pool owner has had a complaint until now. Mayor Slagel said the ultimate decision will be made by the City Council after they receive the ZBA's recommendation. Greg Bazzell said he hasn't been able to find a pool company willing to inspect his pool cover. ZA Widlacki offered him the opportunity to look at the inspection reports collected over the years. Chairman Vance said every pool place he called in surrounding communities all said they'd be happy to inspect the

covers. Member Gavin asked what the cost is. ZA Widlacki produced a report for \$155. Darin Bazzell said he has someone to come inspect his pool cover but it costs \$250. Chairman Vance contacted Backyard Pool and Patio in Bloomington, Blue Herron Pools in Normal, Backyard Living in Bloomington, USA Pool Builders in Bloomington, Pool Covers Pros in Chebanse, and San Juan Pools & Spa in Bloomington and Pekin. Each and every one of these places said they would come to Fairbury. Darin Bazzell said yes, they will come and work on your pool but not to do an inspection only. Greg Bazzell said they don't want to come out and put anything in writing because of liability. Chairman Vance asked 2 of the companies how a pool owner is to work on the cover if the electricity is out and they both said it's very difficult. He asked the pool owners if any of them had to close their cover with no power. Greg said he has a generator. Mayor Slagel said it isn't difficult but it is annoying. Greg said even if the cover is inspected, it's the homeowner's responsibility to turn the key and close it every day. ZA Widlacki reminded the members and the public of the purpose of the Zoning Code and in her opinion 9 states out of 50 that have adopted the ICC ISPC is not enough of a reason to amend our code. She further stated it may be that the other 41 states are "behind the times" and in the coming days more will adopt the code. Her research showed 6 out of 7 communities stretching from Dwight to Normal require fences for all pools. Mayor Slagel said he can attest to the fact that government agencies are not always the fastest moving. Member Pica said the more the City governs, the more the City will be liable for. Member Gavin said an inspection is a pretty small ask.

Chairman Vance asked again if the board wanted to take another couple of weeks before voting. Member Gavin made a motion to table. No second on the motion so the motion failed. Member Tipton made a motion to vote; Pica seconded the motion.

Chairman Vance asked for a voice vote to amend the Zoning Ordinance of the City of Fairbury, Article V, Section 5.7, G, (4) (B) to read:

Be mechanically operated by a key, keypad or other such device as to prevent the cover from being drawn open or retracted except by authorized person(s).

Motion by Pica, second by McDowell. Motion carried 6-0. YES-Pica McDowell Tipton Welch Bull Gavin. Chairman Vance was in favor of the amendment.

Chairman Vance asked for a motion to amend the Zoning Ordinance of the City of Fairbury, Article V, Section 5.7, G, (4) (F) to read:

These devices shall be inspected yearly. Inspection reports certifying the covers to be safe and properly functioning shall be submitted by the homeowner yearly to the City of Fairbury prior to operation of the pool. The inspection report is to be completed and submitted to City Hall by June 1 of each year. When June 1 falls on a Saturday or Sunday, reports must be turned in by the close of business on the next business day.

Motion by McDowell, second by Tipton. Motion carried 5-1. YES-Pica McDowell Tipton Welch Bull. NO-Gavin. Chairman Vance was not in favor of the amendment.

There being no other business, the meeting adjourned at 7:42 p.m.

Respectfully submitted,
Nancy Widlacki, Zoning Administrator and
Secretary to the Zoning Board of Appeals