

Meeting Minutes
Jefferson County Planning Commission
May 17, 2022

The Jefferson County Planning Commission met on May 17, 2022 at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Matt Knott, Vice President; Wade Louthan, Secretary; Steve Stolipher County Commission Liaison; Jack Hefestay, Donnie Fisher, J. Ware, and Shane Roper (via ZOOM). Ron Thomas was absent with notice.

Staff members present included Alexandra Beaulieu, Zoning; Tanya Lyons Planning Clerk; Jonathan Saunders County Engineer; Nathan Cochran, County Attorney; and Via Zoom- Jennifer Brockman, County Planner;

The Planning Commission meeting was held as a hybrid meeting. The Hybrid meeting information was made available on the agenda and packet, which were posted to the County website.

Mr. Shepp called the meeting to order at 7:00 pm. and confirmed that a quorum was present.

1. Approval of the meeting minutes:

Hearing no objection, Mr. Shepp approved the April 12, 2022 and April 19, 2022 minutes as presented.

2. Request for postponement. None.

3. Public Workshop: Concept Plan for Sam Michaels Park Master Plan consisting of the layout for full build-out of park. Applicant: Jefferson County Parks and Recreation. Property Owner: Jefferson County Commission. Property Location: 235 Sam Michaels Lane Shenandoah Junction, WV. Parcel ID: 02000300120000; Size: 137.87 acres; Zoning District: Rural. File: 22-2-SP.

Due to technical issues there was no audio available until 2:42 into the meeting.

Ms. Jennifer Myers, Director, Jefferson County Parks and Recreation, reminded the Planning Commission that she had previously presented the Sam Michaels Park Master Plan to them in 2019. In order to move forward with the engineering for a Site Plan to begin to implement the Master Plan, this Concept Plan, based on the Master Plan, is the next step. The Parks and Recreation Commission was recently awarded an earmark from Senator Capito's office which will enable them to move forward with Phase 2 of the Amphitheatre project. The Parks and Recreation Commission also has a few grants pending. In order to move forward with these projects, they will need a new Site Plan that addresses stormwater management design and this Concept Plan is the first step. The Parks and Recreation Commission have also undertaken a project that would enable them to connect to the public sewer service available across Job Corps Road which would support the project.

Ms. Myers also provided an overview of the future build out of the park which will occur in phases as funding is available. There are plans for more parking and baseball fields, trails, maintenance building, a community event center to use for more classes or citizens can rent out the place for parties etc.

Ms. Alex Beaulieu presented the staff report describing the location of the property and providing an overview of the requirements of the Zoning Ordinance and Subdivision Regulations. The Concept Plan is showing that the Site Plan will be completed in phases. Following approval of the Concept Plan by the Planning Commission, Parks and Recreation can then administratively

process a Minor Site Plan for each phase which will address the required stormwater management plans and other requirements Each Site Plan will require approval of WVDOH entrance permits and approval from the Charles Town Utility Board for the sanitary sewer service.

Mr. Shepp opened the Public Workshop. The following people spoke:

1. Teresa Kirsch - 13420 Carters Creek Place, Chesterfield VA

Her property is right across the street and she wanted more information about the extension of the sewer line and if it would impact their property. Ms. Jennifer Myers said that they are working with the Charles Town Utility Board (CTUB) about installing a Pump Station and that the new line would only be going through the Park property.

Mr. Shepp advised Ms. Kirsch to reach out to CTUB for more information about the sewer line.

2. Bill Dunn 745 Apple Cross Rd Harpers Ferry, WV (on Zoom)

Mr. Dunn's property abuts the east side of Sam Michael's Park with a clear view to the Amphitheatre. He expressed concerns about the noise level from the amphitheater that impacts his family and his neighbors. He stated that he had raised this issue before and that a sound study had been proposed but never completed. He supports development of the park but is concerned that a 1500 seat amphitheater will greatly impact his neighborhood.

Ms. Myers informed the Planning Commission that they have planted trees along the eastern boundary of the park, which will take a few years to grow. They have also worked with the bands to cut off by 9:00 pm during the week and 10:00 pm on the weekends.

Mr. Shepp asked if any Planning Commission members had any questions. Mr. Knott asked if any expansion is planned in the next year. Ms. Myers stated that the next phase to be built is the Concession Stand/Ticket Booth and a Restroom Facility. Additionally 2 wings that will be delegated for storage. This is currently phase 2 out of the proposed 10 phases related to the amphitheater.

Mr. Hefestay asked how many nights a week or season are there concerts. Ms. Myers stated that there are free concerts on scheduled on Thursday nights between May 26 and the last week of July. There is one ticketed event scheduled for late July. Also rentals could happen Thursday, Friday and Saturdays for events and they are hoping to expand to get more people booking.

Mike Shepp asked for a motion related to the Concept Plan and Proceed to the Site Plans.

Mr. Matt Knott made a motion to approve the Concept Plan as presented and to authorize the applicants to proceed to the Site Plan phase. Mr. Jack Hefestay seconded the motion. The motion was approved unanimously.

4. **Public Hearing:** Request for a waiver of Section 24.113.B.10 of the Subdivision Regulations, which requires an Archaeological Survey for all Major Subdivision Preliminary Plats for Kings Crossing Subdivision. Applicant/Property Owner: DR Acquisitions LLC. Property Location: West of Charles Town Road, South of St James Catholic Church. Parcel ID: 0200170022; Size: 86+ acres; Zoning District: Residential Growth. File 22-10-PCW.

The Applicant's consultant, Mr. Jason Gerhart with Integrity Federal Services, and the applicant, Matt Stare with DR Acquisitions, introduced themselves.

Ms. Alex Beaulieu presented the staff report noting that the Concept Plan has already been

approved. This is a request to waive the requirement to prepare a Phase 1 Archeological Study with the Preliminary Plat. The staff has agreed that it is a reasonable request with a recommendation that in the future the Planning Commission amend this requirement.

The Applicant Jason Gerhart explained that the applicant waited until this point in the review of the project so that the Jefferson County Historic Landmarks Commission (JCHLC) would have an adequate time to provide any comments. The JCHLC had no comments or concerns about this proposal.

Mike Shepp opened the Public Hearing. The following people spoke:

1. Stacy Tabb-248 Willowdale Drive Shepherdstown (Zoom)

Ms. Tabb spoke as a concerned citizen noting that this type of waiver has been approved previously and she believes that some people don't know why this is necessary to do because there are a lot of historical landmarks in the county. She believes that it is important to have these studies should be done by a 3rd party that knows what to look for before we get too far into the subdivision design. Ms. Tabb would like the Planning Commission to deny these requests related to waiving the Archaeological Studies.

Mr. Shepp noted there were no other members of the public signed up to speak.

Mr. Stolipher moved to approve the waiver as submitted. Mr. Knott seconded the motion.

Mr. Jack Hefestay stated that the Planning Commission agenda packets are available online and if the Historical Landmarks had anything to say that they would have objected to the Planning Commission moving forward, so he believes they should approve this waiver as submitted.

Mr. Jason Gerhart also reminded the Planning Commission that the Jefferson County Historic Landmarks Commission does have an opportunity to comment at the Concept Plan stage and that they provided a letter specific to this project at that time.

Mr. Mike Shepp closed the Public Hearing and called for the vote on the previously made motion, which was seconded. The motion was approved unanimously.

5. **Public Hearing:** Preliminary Plat Public Hearing for Kings Crossing Major Residential Subdivision consisting of 404 lots (177 SFD and 227 SFA) and associated infrastructure. Applicant/Property Owner: DR Acquisitions LLC. Property Location: West of Charles Town Road, South of St James Catholic Church. Parcel ID: 0200170022; Size: 86+ acres; Zoning District: Residential Growth. File: 21-8-SD.

Ms. Alex Beaulieu provided an overview of the staff report and noted that the staff recommended approval with the following conditions: WVDOH approval of the required Traffic Impact Study (TIS) and issuance of the Highway Entrance Permit; and Charles Town Utility Board approval of both on water and sanitary sewer utility design and connections. She also noted that a Preliminary Plat vests the project for 5 years.

The applicant's consultant, Mr. Jason Gerhart, commented that the staff presentation addressed all of their concerns. He noted that the Traffic Impact Study has been approved by the WVDOH, with a few minor comments/amendments to be addresses. The applicants have applied for two entrances on WV115 and they have gone through 2 rounds of comments by the WV DOH. The approved permits should be received soon. Regarding the water and sewer, the Charles Town Utility Board has the plans and are going through the sequencing of the pump station connections

to connect to a force main. The City of Charles Town did approve the plan to submit to the State Health Department for the final construction approval. They are awaiting the final approved permit to submit for staff to sign off on the Preliminary Plat.

Mr. Shepp opened the Public Hearing. The following people spoke:

1. Elizabeth Ricketts- 309 W. Washington St Charles Town (Zoom)

Ms. Ricketts questioned if there are sidewalks included in this Subdivision because people are going to want to walk and do it safely. Ms. Ricketts recommends that the Planning Commission work with the Metropolitan Planning Organization (HEPMPO) and the WV Division of Highways because the roads will need to be improved. She noted that it is already a dangerous road with all the hills and with 2 new added entrances it will be even more dangerous.

There were no other speakers signed up and Mr. Shepp closed the Public Hearing.

Mr. Steve Stolipher made a motion to approve the Preliminary Plat as submitted with the two conditions noted by staff. Mr. Jack Hefestay seconded the motion and it was approved unanimously.

6. **Public Hearing:** Request for a waiver of Section 20.203B of the Subdivision Regulations, which requires a Site Plan when the footprint of any addition or a new structure (building and/or parking lot) is greater than 1,200 square feet. Applicant/Property Owner: Krop Properties/Tina Krop. Property Location: 640 War Admiral Blvd, Charles Town. Parcel ID: 02000100270001; Size: 4.70 acres; Zoning District: Industrial-Commercial. File: 22-9-PCW

Ms. Alex Beaulieu presented the staff report explaining that the applicant currently has a Zoning Certificate to operate seasonally with administrative approval. They have an approved site plan that would allow them to move forward with year-round operation including paved parking. They are requesting to be able to temporarily continue to utilize the current grass and gravel parking with Tents and Food Trucks that will be open year round until they can afford to move forward with the site improvements. The staff recommends if the Planning Commission is inclined to approve this request, that there be a set time frame to complete the site plan improvements. The planning staff recommends 2 years after the approval, if Mr. Saunders is agreeable to that.

The applicant, Ms. Tina Krop, clarified that she and her husband got a divorce and she needs a little bit more time to get her finances together.

Mr. Shepp opened the Public Hearing. There was no public comment. Mr. Shepp closed the Public Hearing.

Mr. Stolipher made a motion to approve the waiver request with a 24-month time frame per the staff recommendation. Mr. Louthan seconded the motion; which was approved unanimously.

7. **Public Hearing:** Proposed text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA22-01, to allow Solar Energy Facilities to process as a Principal Permitted Use in areas located inside the Urban Growth Boundary and Preferred Growth Area as delineated on the Future Land Use Guide in the County's Comprehensive Plan; and as a Conditional Use in areas outside of the Urban Growth Boundary and Preferred Growth Area. The text amendment proposes revisions to Article 2 Definitions; Article 8 Supplemental Use Regulations (creation of Section 8.20 Solar Energy Facilities); and Appendix C Principal Permitted and Conditional Uses Table.

Mr. Shane Roper and Mr. Steve Stolipher recused themselves for this agenda item as well as Items 8 and 10b.

Ms. Alex Beaulieu provided a brief overview of the proposed draft of the text amendment. The amendment includes revisions to the definitions and the supplemental use regulations, as well as revisions to Appendix C.

Mr. Shepp opened the Public Hearing. The following members of the public spoke during the public hearing:

1. Braden Houston – 68 Chestnut St, Newton, Massachusetts, OPD Energy 

Mr. Houston stated that OPD Energy is one of the developers representing a potential solar project and that they are supportive of the Ordinance amendment as written.

2. Ms. Mary Vandevander - 67 C Edward Lane, Charles Town

Ms. Vandevander spoke in support of renewable energy sources due to climate change and is supportive of solar companies locating in the County and that she hoped the County will lead the way

3. Delegate Wayne Clarke - 397 Diggs Street

As a Member of WV House Energy Committee, Mr. Clark spoke in support of bringing Solar into Jefferson County through the proposed amendment. He stated that this is going to bring Jefferson County into the forefront of economic diversification with additional business that will help with the growth of the County and Eastern Panhandle.

4. Mr. Rockwell – Myerstown Road, WV

Mr. Rockwell requested to save his comments until the end of the hearing.

5. Rodney Rice – 3327 Winchester Rd Martinsburg WV (Zoom)

Mr. Rice spoke as the Business Manager of the International Brotherhood of Electrical Workers (IBEW) in support of bringing solar into the County.

6. Rob Reckert – 327 N Center St., Cumberland, MD (Zoom)

Mr. Reckert spoke on behalf of the Atlantic States Regional Council of Carpenters, representing 90-100 Carpenters in the Eastern Panhandle. He spoke in support of the solar text amendment.

7. Stacy Tabb - 248 Willowdale Dr., Shepherdstown, WV (Zoom)

Ms. Tabb provided an overview of the history of the use of solar energy across the country. She expressed concern about the size of utility scale solar and recommended amending the text amendment to include limiting solar to be in close proximity of existing transmission lines and to include a provision for the passage of wildlife through the solar panel project sites.

8. Ken Lowe – 233 Lowe Dr Shepherdstown, WV (Zoom)

Mr. Lowe called as a real estate broker supporting a new endeavor that has not been announced yet. He spoke in support of the proposed text amendment.

9. The Planning Commission invited Mr. Rockwell back up to speak. Mr. Rockwell stated he did not have any additional comments to present beyond what he submitted in writing and included in the Planning Commission's agenda packet.

Mr. Shepp closed the Public Hearing.

8. **Discussion and Possible Action:** Consideration of and possible action on a recommendation related to the text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA22-01, regarding Solar Energy Facilities.

Mr. Shepp opened the discussion and referred the Commission members to the public comments presented during the hearing. He noted that the County had been discussing how to address utility scale solar for about it for three years.

Mr. Shepp proposed an amendment to the draft text to direct the Zoning Administrator to incorporate a provision that clarifies for projects located both within and outside the Urban Growth Boundary and Preferred Growth Area, a conditional use permit and concept plan would be permitted to process concurrently with a requirement that any changes imposed by the Board of Zoning Appeals during the Conditional Use Permit hearing would need to be reflected on the Concept Plan.

After discussion as to whether this determination could be made by the Zoning Administrator, Mr. Shepp withdrew his amendment and made a motion to approve the Solar Text Amendment as written and to forward the draft amendment to the County Commission for them to schedule a Public Hearing.

Mr. Hefestay seconded the motion.

Mr. Shepp amended his motion to include that the Planning Commission finds the draft text amendment is consistent with the *Envision Jefferson 2035 Comprehensive Plan*. Mr. Hefestay accepted this modification to the motion, which carried unanimously.

9. **WITHDRAWN - Public Hearing:** Request for a waiver of Section 20.201A.2 (a) to allow a lot in a proposed minor subdivision to utilize an existing 20' access easement (Tabernacle Lane) without obtaining an additional WV DOH permit. Applicant: Mission Tabernacle Church. Property Owner: Charlotte Beahm; Property Location: 382 Mission Rd., Harpers Ferry, WV. Parcel ID: 02021A00140000; Size: 1.37 acres; Zoning District: Rural. File: 22-11-PCW.]

10. **Reports from Legal Counsel**

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109.

Mr. Nathan Cochran – Nothing further to add; currently in litigation and have filed a motion for a protective order related to the matter of discovery, which has not been acted upon.

- b. Review of Zoning Text Amendment File #ZTA19-03 related to solar energy facilities, including discussion of Jefferson County Circuit Court Civil Action No.'s 2021-C- 33 through 37 and Jefferson County Circuit Court Civil Action No.'s 2021- C-46 through 50, and WV Supreme Court No.'s 21-0727, 21-0728, and 21-0731.

Mr. Nathan Cochran stated that those cases are currently under negotiations as to resolution. They are wrapped together with the current text amendment and waiting to be resolved.

11. **Planner's Memo** - Next Meeting is June 14, 2022
12. **President's Report** - None
13. **Actionable Correspondence** - None

14. **Non-Actionable Correspondence** - None

Mike Shepp motioned to adjourn the meeting; Mr. Jack Hefestay seconded the motion, which carried unanimously. The meeting was adjourned at 7:54 pm.

These minutes were prepared by Tanya Lyons, Planning Clerk.