

Meeting Minutes
Jefferson County Planning Commission
August 09, 2022

The Jefferson County Planning Commission met on August 09, 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; Ron Thomas (via ZOOM) and Shane Roper (via ZOOM). J. Ware was absent without notice.

Staff members present included Alexandra Beaulieu, Deputy Director and Zoning Administrator; Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer; Nathan Cochran, County Attorney; and Tanya Lyons, Planning Clerk.

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.

There was no audio recording for the first 9 minutes of the meeting due to technical difficulties.

1. Approval of the meeting minutes:

Hearing no objection, Mr. Shepp approved the July 12, 2022 minutes as presented.

2. Request for postponement. Item # 6 Withdrawn Public Hearing Rock Ferry Station Lot 32 Final Plat Amendment was postponed at the request of the applicant to an unspecified future meeting.

Mr. Shepp modified the agenda to move Item # 7 to be heard first as it is not expected to require much time.

7. Discussion and Action: For the Planning Commission to vote to approve or deny the Country Club Commons Preliminary Plat Application as complete in accordance with Sections 24.113 and 24.114 of the Subdivision Regulation, for the purpose of scheduling a Public Hearing for this application. Property Owner: B.C. Partners, Inc.; Property Location: Parcel ID: 04001100110000; Size: 9.54 acres; Zone: Residential/Light Industrial/Commercial. File: #19-17-SD.

Steve Stolipher recused himself for this agenda item.

Ms. Brockman provided an overview of the requirements of the Subdivision Regulations and WV Code related to the requirement that the Planning Commission deem a Preliminary Plat complete for the purpose of scheduling a Public Hearing. She noted that while there are still outstanding comments from the second review of the Country Club Commons Preliminary Plat, the applicant believes they can be addressed prior to the Public Hearing.

Mr. Paul Raco, consultant representing the applicant, informed the Planning Commission that the WV DOH has completed their final review of the entrance permit, which has been responded to. The applicant is awaiting final approval of the entrance permit by Dave Cramer. He also stated that if they have not received the WV DOH approval, or at least conditional approval, they would request postponement.

Mr. Shepp made a motion to deem the Country Club Commons Preliminary Plat as complete and to schedule the Public Hearing for the September 9, 2022 Planning Commission meeting; Matt Knott seconded the motion, which carried unanimously.

Mr. Stolipher re-entered the room.

- 3. Public Workshop:** Miller Station Apartments Concept Plan to consist of 7 Multi-Family Garden Style Apartments with 218 units, associated parking spaces, SWM facilities, and signage. Applicant: Keane Enterprise; Property Owner: Gerald A Miller Estate c/o Paul S. Schleifman; Property Location: Captain Chews Trace, Charles Town, WV; Parcel ID: Tax District: Charles Town (02), Map: 8C, Parcels: 1-8; Combined Lot Size: 10 acres; Zoning District: Residential/Light Industrial/Commercial; File: #22-6-SP.

Ms. Brockman provided an overview of this application and stated that other than the waivers and the variances mentioned in the staff report, the proposed Concept Plan meets all the requirements. Charles Town Utility Board (CTUB) public water and sewer will serve the project. WVDOH has asked for a Traffic Impact Study (TIS). The applicant will need to merge the existing 8 lots into one lot before the Site Plan can be approved.

Mr. Todd Heck, with Morris and Ritchie consultants, and Andy Shuckra, with Keane Enterprise, provided an overview of the proposed project.

Mr. Shepp open the Public Workshop and asked for public comment.

- Susan Pippis, resident of Charles Town Spoke and Patrick Henry Estates HOA Board member spoke on behalf of the HOA Board. The Board is concerned about buffering between their subdivision and the proposed apartment complex and requested a better buffer. The Board recommended trees and a masonry wall.
- Kristen Martin, resident of Patrick Henry Estate also requested that a sufficient buffer be required.

The applicant responded in that the buffer area would not need to be a wall as the vegetation in the area is already fully planted, but they are willing to put up a 6 ft fence privacy fence in this area as well.

Mr. Shepp closed the Public Workshop.

Mr. Shepp stated that he would like to see the privacy fence that the neighbors are concerned about. Ms Beaulieu stated that the applicant will be required to comply with the narrow buffer requirements of the Standard Details. They will also be required to put a note on the site plan that they will replace any trees that die.

The applicant responded that they are willing to put a privacy fence up within the required buffer.

Mr. Stolipher made a motion to accept the Concept Plan as presented with the provision that the applicants include a 6 foot board fence along the northern property line, adjoining Patrick Henry Estates. Mr. Hefestay seconded the motion, which it was approved unanimously.

- 4. Public Hearing:** Request for waiver from Section 22.208 to eliminate the sidewalks from the front of the Miller Station Apartments parcel. Applicant: Keane Enterprise; Property Owner: Gerald A Miller Estate c/o Paul S. Schleifman; Property Location: Captain Chews Trace, Charles Town; Parcel ID: Tax District: Charles Town (02), Map: 8C, Parcels: 1-8; Combined Lot Size: 10 acres; Zoning District: Residential/Light Industrial/Commercial; File: #22-17-PCW.

Ms. Brockman presented an overview of the request and the requirements of the Subdivision Regulations as detailed in the staff report. She also noted that the Eastern Panhandle Transit Authority has a bus stop at the Wal Mart Shopping Center located approximately across the street from this property. The applicant is requesting to waive the required sidewalk along the road frontage and replace it with a crosswalk to the other side of the street where a sidewalk exists.

Mr. Todd Heck, with Morris & Ritchie, and Andy Shukra, with Keane Enterprises, provided an overview of their waiver request and noted that the road frontage of this property has a steep slope along Patrick Henry Way. They noted that there are no existing sidewalks leading to Walmart and neighboring developments on the west side of Patrick Henry Way so if they were to construct the sidewalk it wouldn't connect to anything. The applicant is requesting approval to waive the sidewalk and to provide a road crossing from their entrance to the sidewalk on the opposite side of the road.

Mr. Shepp asked if they have had any discussion at this time with DOH regarding the road crossing. Mr. Heck commented that they had not yet discussed this with WV DOH.

Mr. Shepp opened the Public Hearing. No one signed up to speak.

Mr. Shepp closed the Public Hearing.

Mr. Shepp asked for staff recommendations.

Ms. Brockman stated that while she prefers sidewalks, particularly in an area such as this with various residential densities and adjoining commensal development, due to the slope issues along the property frontage, staff would support the requested crosswalk to the existing sidewalk.

Mr. Shepp asked the applicants if they could put an easement along the front of the property for any future sidewalks. Applicants responded with they have no reservations doing that.

Mr. Shepp moved to approve the waiver as submitted with the condition that they put in the easement for a future sidewalk and work with DOH to receive approval for the proposed crosswalk. Mr. Stolipher seconded the motion; which was approved unanimously.

- 5. Public Workshop:** Concept Plan for the Blake Solar Energy Facility. The applicant, Horus West Virginia 1, is proposing an 80MW solar electric generating facility to be located on approximately 516 acres, consisting of single-axis trackers, 535W modules, 3.38MW inverters, and new substation to connect the solar facility with the electric grid. A portion of the project site has existing high voltage power lines running through the property. File: #22-7-SP.

Property Owners/Location/ID/Size/Zoning District:

- Thorn Hill LLC; Vacant parcel on east side of Kabletown Road, south of Charles Town; Parcel ID: 2001900140000; Size: 171.59 acres; Zoning District: Rural
- Peel Properties WVA LLC; Two Vacant parcels on the south side of Charles Town Road, east of Kabletown Road; Parcel ID: 02001900150003; Size: 51.19 acres; & Parcel ID:02001900150002; Size: 46.24 acres; Zoning District: Rural
- High Horizons Farm Inc.; Vacant parcel on both the north and south side of Charles Town Road, north of the intersection with Kabletown Road; Parcel ID: 02001900150002; Size (southern portion): ~ 185 acres; Zoning District: Residential Growth; Size (northern portion): ~65 acres Zoning District: Rural

A Conditional Use Permit for the 270 acre portion of the project located outside of the Charles Town Urban Growth Boundary, on the east side of Kabletown Road, was approved by the Board of Zoning Appeals 7/28/22 (File: #22-4-CUP).

Ms. Brockman provided an overview of the process for this Public Workshop and emphasized that Solar Facilities require only a Concept Plan not a Site Plan.

Mark Dyck, with Integrity Federal Services (IFS), the consultant for the applicant, and Braden Houston, with Horus West Virginia 1, were present for the presentation. Mr. Dyck provided an overview of the site sketch/Concept Plan and described where the solar panels are proposed to be

located and discussed the applicants proposed landscaping which is greater than the Ordinance requires. He also noted that final engineering is not complete. Mr. Dyck informed the Planning Commission that the Board of Zoning Appeals conditioned approval of the Conditional Use permit portion of this project with the requirement that the 179 lots making up the Thornhill Subdivision will need to be merged prior to issuance of the Zoning Certificate. He also discussed the need to address the stormwater requirements and to provide the required landscape buffers. He noted that they will have sufficient buffering for the panels.

Mr. Shepp opened the Public Workshop and the following members of the public spoke:

- Mr. Robert Edwards, Charles Town WV, expressed concerns on EMF Health Radiation Value of the homes surrounding the solar panels and expressed concern that Jefferson County cannot handle a job this size as they do not have the manpower nor plans in place for this kind of project.
- Mr. Alan Dattlebaum, Charles Town, expressed concern that no one is going to the site itself. He asked how the proposed use affects the water and the air quality? He stated that he believes that the project was pushed through for increased tax revenue.
- Mr. Justin Stone- 16452 Charles Town Road, he and his family own 3 parcels in this area. He expressed concern about water run off from the solar panels as he believes that it will flow to their lots. He stated that they have an historical farm house, the Craighill House, on the property that has been documented as a Class 2 JCHLC Historical feature. He is opposed to the solar project and feels that it will devalue the homes around it. He stated that solar facilities in the rural zoning district impact other rural investments. He also stated tht it did not appear that the Bloomery lot would be buffered as required.
- Ms. Amanda Lane, 109 Huntfield (in Eastland), stated that her main concern related to the floodplain easement between her and her neighbor. She is concerned about the storm water runoff from the impervious areas created by the solar panels and the effect it will have on the drinking water. She suggested putting in “beauty berms” within the required buffer which might help decrease the water flow and related runoff.
- Ms. Anastaysia Tabb, 248 Willowdale Dr, expressed concern about the impact on the designated floodplain and adjacent wetlands. She expressed concern that Evitt’s Run has been cited in studies for the flood plain area and would like to make sure that the appropriate measures meeting FEMA requirements are taken.

The applicants provided the following response to the comments:

Mr. Dyck explained that the Stormwater Management Ordinance only requires a stormwater management plan when the panels are to be placed on slopes greater than 10%. In this circumstance, a gravel infiltration trench system will be required to be placed under the drip line of the solar panels which serve to slow the water runoff. Where the slopes do not generate this requirement, turf will be planted and maintained throughout the solar energy facility. Additionally an NPDES permit is required to meet state erosion and sediment control requirements. The applicant also indicated that they are willing to work with the adjoining homeowners to modify the buffers where needed to ensure the water runoff does not affect them adversely.

Mr. Shane Roper asked about the slope and storm water management. Mr. Dyck explained that the applicant will be submitting a stormwater report which will determine where various stormwater improvements are required and the applicant make sure everything will be in place before all the panels are put on the property. Mr. Dyck indicated the impact of the water runoff should be minimal because of the light footprint of the solar panels.

Mr. Houston spoke stating that they are aware of articles on the internet about EMF, but there is no solid documentation of any known issues. He also stated that this solar facility is proposed to strengthen the grid of Jefferson County.

Mr. Dyck also noted that while the applicants are not required to create extra buffers for a neighboring Class 2 historical site, the applicants have already offered to do so.

Mr. Shepp closed the public workshop.

The Planning Commission members had a number of questions for the applicants:

Mr. Jonathan Saunders, County Engineer, answered the Commissioners' questions about the Stormwater Management (SWM) Ordinance requirements and the floodplain modification requirements. He noted the County's Stormwater Ordinance is based on a National Civil Engineering Study regarding solar panels. He confirmed that the Ordinance does not require the infiltration trenches when the slope is 0 – 10%. He also noted that if it is determined that the applicants can't meet the stormwater exemption provided for in the Ordinance, they will be required to complete a full stormwater plan that meets all the requirements of the Ordinance.

Mr. Ron Thomas asked if the solar panels are going to be put over the septic reserve.

Mr. Dyck responded and said the Health Department is not aware of the location of the referenced septic tank but, if the developer happens to run into one during construction, they will notify the local Health Department.

Mr. Jack Hefestay asked questions about the spacing of the proposed panels and suggested that a graphic might help the general public understand. Mr. Dyck showed the Commissioners where this information can be found in Concept Plan. He noted that the panels will need to be 12ft apart on their "ends" and that they will be 16 ft apart from center to center.

Mr. Hefestay also inquired about the potential water runoff impacts the surrounding homes and whether they have anything in place to repair /replace that home. Mr. Dyck responded stating that if the applicant could prove the damage is related to the installation the solar panels, insurance should cover this requirement.

Mr. Shepp asked for a motion. Mr. Hefestay made a motion to accept the Concept Plan as submitted, with the agreed to stipulation regarding working with the various neighbors regarding the design of the buffer adjacent to their properties. Mr. Knott seconded the motion; which passed unanimously.

Mr. Steve Stolipher returned to the room.

There is no public comment for the following items.

6. **Withdrawn: Public Hearing:** Rock Ferry Station Lot 32 Final Plat Amendment. This proposal is to modify the 300' conservation buffer area on Lot 32. Applicant: Clint Curtis; Property Owner Clint Curtis & Cassaundra Maximin; Property Location: Vacant Parcel on Eagle Landing Rd Harpers Ferry, WV; Parcel ID: 06002200140032; Size: 3.26 acres; Zoning District: Rural; File: 22-4-FPA.
7. *Moved earlier in the meeting:* **Discussion and Action:** For the Planning Commission to vote to approve or deny the Country Club Commons Preliminary Plat Application as complete in accordance with Sections 24.113 and 24.114 of the Subdivision Regulation, for the purpose of scheduling a Public Hearing for this application. Property Owner: B.C. Partners, Inc.; Property Location: Parcel ID: 04001100110000; Size: 9.54 acres; Zone: Residential/Light Industrial/Commercial. File: #19-17-SD.

8. Reports from Legal Counsel

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109.
- 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.
- c. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy Facilities).
- d. Discuss and review Jefferson County Circuit Court Civil Action No. 2022-C-85.

Mr. Shepp asked Mr. Nathan Cochran if an Executive Session is required for any of the legal matters. Mr. Cochran suggested they go to Executive Session to receive legal advice for items listed under Agenda Item Number 8. Mr. Shepp made a motion to go into Executive Session to receive legal advice related to items 8a through 8d; Mr. Knott seconded it, which passed unanimously.

At 8:45 pm, Mr. Shepp made a motion to come out of Executive Session; Jack Hefestay seconded, which was approved

9. Planner's Memo

Ms. Brockman stated that the next Planning Commission meeting is scheduled for Sept 13, 2022. At this time, there is a Concept Plan Workshop for another solar facility on that agenda, which will also need BZA approval of a Conditional Use Permit for the area outside the Urban Growth Boundary.

10. President's Report

11. Actionable Correspondence

12. Non-Actionable Correspondence

Mr. Stolipher motioned to adjourn the meeting; Mr. Louthan seconded the motion; which was carried unanimously.

The meeting was adjourned at 8:46 pm. These minutes were prepared by Tanya Lyons Planning Clerk.