

Meeting Minutes
Jefferson County Planning Commission
October 10, 2023

The Jefferson County Planning Commission met on October 10, 2023 at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Matt Knott, Vice President; Steve Stolipher, County Commission Liaison; Wade Louthan, Secretary; Jack Hefestay; Aaron Howell.

Donnie Fisher, Tim Smith and J. Ware were absent without notice.

Staff members present included Jennifer Brockman, Chief County Planner; Luke Seigfried, County Planner; Jonathan Saunders, County Engineer; Nathan Cochran, Prosecuting Attorney; and Michelle Evers, Planning Clerk.

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

1. Approval of Meeting Minutes: September 12, 2023 and September 26, 2023

Mr. Shepp stated the minutes stand approved without objection.

2. Request for postponement.

3. POSTPONED until 11/14/23 by request of the Applicant: Public Workshop: Concept Plan for Bakerton Monopole (fka Harvest Ct) Telecommunications Tower consisting of a 100' Monopole Telecommunications Tower with a 50' x 50' fenced compound. Applicant: Smartlink Group, LLC / Attn: Scott Nichols; Property Owner: Timothy R & Marla B Landis; Property Location: 248 Harvest Court, Harpers Ferry, WV; Parcel ID: 04000300750000; Size: 13.678 ac; Zoning District: Rural (File #23-5-SP).

Mrs. Brockman explained the applicant's request regarding postponement and asked the Planning Commission members if they wanted a new public notice placard reflecting the new meeting date.

Mr. Shepp stated that Mr. Cochran should decide if it was necessary. Mr. Cochran suggested it would be in the best interest for staff to create placard signs to reflect to new meeting date and time.

This item was postponed to the November 14, 2023 Planning Commission Meeting.

4. Public Hearing: Waiver request from Section 21.402 to allow a six (6) foot tall privacy fence to remain within a platted drainage easement. Applicant/Property Owner: Jack & Helen Payne; Property Location: 247 Saber Drive, Charles Town, WV; Parcel ID: 02010F00570000; Size: 0.1768 ac.; Zoning District: Residential Growth (File #23-22-PCW).

Ms. Brockman provided an overview of the staff report and explained that the fence had already been constructed.

The applicant, Jack Payne, explained the nature of the request to the Planning Commission. He stated that the HOA noted that the fence was in the easement but that there was no water backup as a result of the fence.

Mr. Knott addressed the applicant and advised that even if the waiver request is approved, the applicants' HOA can override the decision made by the Planning Commission.

The Planning Commission asked the applicant clarifying questions about the nature of the request.

Mr. Shepp opened the public hearing. There was no public comment. Mr. Shepp closed the public hearing.

Mr. Saunders provided staff comments and recommendations regarding the Storm Water Management and the impact of a fence in the drainage easement. He stated that engineering recommends having an engineer analyze the situation to determine the impact on water flow in the easement.

The Planning Commission asked the applicant additional questions regarding the nature of the request.

Mr. Shepp made a motion to approve the waiver as presented with the condition that the applicant hire a professional engineer within 6 months to ensure there are no Storm Water Management issues. Mr. Hefestay seconded the motion, which carried unanimously.

There is no public comment for the following items.

5. Review and Approval: Planning Commission Calendar Year 2024 Meeting & Submission Dates

Ms. Brockman provided an overview of the proposed meeting and application calendar dates for the Calendar Year 2024, which needed Planning Commission approval, and to be posted on the website at this time for the January meeting. Mrs. Brockman also stated there was a conflict for the May 2024 meeting date due to the Primary Election date, and asked the Planning Commission to decide on a new date.

The Planning Commission decided to have the May 2024 Planning Commission meeting on May 7, 2024.

Mr. Knott made a motion to approve the calendar as submitted with the new May date. Mr. Louthan seconded the motion, which carried unanimously.

6. Discussion/Possible Action: Ordinance Rewrite Committee Report on Waiver Process

Mr. Shepp pointed out to the Planning Commission members that Section 24.300 of the 2008 Subdivision Regulations, as amended, details the process for submitting and considering process and procedural waivers from the Subdivision Regulations. He noted that while subsection C of this Section does require a property, that is the subject of a waiver request, to be posted and adjoining properties to be notified, it does not explicitly state that a Public Hearing is required, which the Planning Commission has been doing. He further noted that state law (WV Code 8A) does not provide this requirement and only requires local communities to include a process for waivers in the Subdivision Regulations.

Mr. Shepp recommended that the Planning Commission modify their current process to be in conformance with the Subdivision Regulations as written. Mrs. Brockman clarified that the applicant will still need to be present and that staff will still be providing the Planning Commission with a staff report related to all waiver requests. Mr. Shepp further noted that the Planning Commission can consider amending the Subdivision Regulations text in the future if they determine a different process is preferred.

The Planning Commission discussed the proposed process and clarified that written comments could still be provided and included in the Planning Commission packet.

Mr. Stolipher made a motion that the Planning Commission should process all waivers in accordance with the current version of the Subdivision Regulations. Mr. Knott seconded the motion, which carried unanimously.

7. Reports from Legal Counsel

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109 (RE: PC File #21-2-Z – Jefferson Orchards Rezoning).
- b. Review and discuss 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 and Jefferson County Circuit Court Civil Action No. 2023-C-112 (RE: PC File #ZTA19-03 Solar Energy Facilities text amendment).
- c. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: PC File #ZTA22-01 Solar Energy Facilities text amendment).
- d. Discuss and review for possible action Jefferson County Circuit Court Civil Action No. 2023-C-48 (RE: PC File #21-8-SP Berryville Pike Telecommunications Tower).
- e. Discuss and review of VB BTS, LLC v. Jefferson County, WV and the Jefferson County Planning Commission, U.S. N.D. W. Va. Case No. 3:23-CV-171 (RE: PC File #23-3-SP – Shannondale Lake Telecommunication Tower).

Mr. Cochran requested to go into Executive Session to discuss and provide legal advice on Item E.

Mr. Howell of the Planning Commission recused himself from this agenda item.

Mr. Shepp moved to go into executive session for the purpose of receiving legal advice on Item E under 'Reports from Legal Counsel' at 7:22 pm. Mr. Stolipher seconded the motion, which carried unanimously.

Mr. Shepp moved to go back into regular session at 7:41 pm. Mr. Knott seconded the motion, which carried unanimously.

Mr. Cochran shared that on October 2nd he received an updated site drawing from Vertical Bridge regarding the Planning Commission's counter offer and stated that they were in agreement with the terms requested. *A copy of the drawing was submitted for the record and posted to the website for public review.* He further stated that the attorneys were now working on the paperwork required to be presented to the Court and that he would provide it to the Planning Commission at a future meeting. No action was taken by the Planning Commission.

Mr. Howell of the Planning Commission rejoined the meeting.

8. Planner's Memo

Ms. Brockman reminded the Planning Commission about the upcoming Planning Commission Meeting, including the Bakerton Monopole Concept Plan Workshop, and the Comprehensive Plan Work Session on November 14, 2023.

9. President's Report

Mr. Shepp noted that the Planning Commission Ordinance Re-write Committee had determined to put the re-write on hold until after the Comprehensive Plan is approved, so that the amendments can reflect recommendations from the Plan.

10. Actionable Correspondence

11. Non-Actionable Correspondence

Mr. Stolipher made a motion to adjourn the meeting at 7:44pm. Mr. Hefestay seconded the motion, which carried unanimously.

These minutes were prepared by Michelle Evers, Planning Clerk.