

Jefferson County Planning Commission
June 11, 2013

The Jefferson County Planning Commission met on June 11, 2013, with the following Commission members present: Paul Taylor, President, Daniel Hayes, Vice President; Gene Taylor, Secretary, Steve Stolipher, Walt Pellish, J.P. Phillips, Wade Louthan, Gary Phalen, and Darlene Truman. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathan Saunders, Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Alexandra Beaulieu, Planning Clerk.

Mr. P. Taylor called the meeting to order at 7:02 p.m.

1. Approval of the minutes for the May 14, 2013 meeting.

Mr. Hayes motioned to approve the minutes. Mr. Pellish seconded the motion, which carried unanimously.

2. Citizen Communications (hereinafter known as CC).

Mr. Taylor read the statement from the agenda which clarified the intent of CC. Ms. Beaulieu retrieved the sign in sheets for Mr. P. Taylor. Ms. Brockman informed speakers of the purpose of CC as well as the rules for speakers. Mr. P. Taylor addressed those who had signed up for CC.

Mr. Jeffrey Bannon indicated he would like to speak on Agenda Item 6. Mr. Bannon stated he was in favor of the proposed text amendments. Ms. Janis Schiltz indicated she would like to speak on Agenda Item 6 and the topic of the proposed zoning district titled Planned Neighborhood Development (Agenda Item 7). She stated that the definition in the front of the proposal varied from the definition listed in Appendix C, and appeared to provide the Planning Commission unrestricted authority.

3. Request for postponement. None.

4. Morgan's Grove Market Site Plan.

Mr. Phalen recused himself from the meeting at 7:10 PM due to the fact that Mr. Peter Corum is his son-in-law.

Mr. Rivard provided a staff report recommending the Planning Commission find the Morgan's Grove Market Site Plan "Provisionally and Conditionally Complete" in order to schedule a Public Hearing on July 9, 2013 with the requirement that certain conditions be met one (1) week prior to a Public Hearing. The requested conditions included:

- Resubmittal of the site plan, with revisions addressing any significant outstanding comments (Any minor comments not yet addressed can be incorporated into the provisional finding of completeness).
- Written documentation that the WVDOH has issued the highway entrance permit and/or that it will be issued pending bonding.
- West Virginia State Health Department permit numbers for public water and sewer.

Mr. Rivard stated that if the above referenced documents were not submitted one (1) week prior to the next available Planning Commission meeting on July 9, 2013, the request by the applicant would be postponed to the next available Planning Commission meeting on August 13, 2013 or any subsequent meeting where the documents could be submitted one (1) week prior to the meeting date.

Ms. Brockman stated that after staff agreed to place the request for MGM on the June 11, 2013 meeting agenda, staff realized that it would not be possible to meet the required 21 day notice for a public hearing on July 9, 2013 if the notice is placed in the Spirit of Jefferson. She stated that if we advertised a public notice in the Martinsburg Journal we could meet the 21 day notice requirement but stated that the Spirit of Jefferson is the Department's standard source for posting ads. She proposed that an advertisement be placed in the Spirit of Jefferson in addition to the Martinsburg Journal to be consistent with our current practices and meet the 21 day notice requirement. Alternatively, Ms. Brockman stated that the Planning Commission could call a special meeting for July 23, 2013 to ensure we meet the 21 day notice requirement.

Mr. Hayes asked if the applicant did not meet the recommended provisions set one (1) week prior to July 9, 2013 would postponement require re-advertisement with full 21 day notice?

Mr. Groh stated that WV Code states that a public notice has to be posted at least 21 days ahead of time and therefore would not require re-advertising for a public hearing.

Mr. Hayes stated that the ad should list that the project may be postponed if certain provisions were not met.

Mr. Taylor invited the applicant to speak.

Mr. Blackmer addressed the PC on behalf of Morgan's Grove Market (MGM). Mr. Blackmer stated that the State Health Department reviewed their plans and that the Health Department was waiting on approval from the DEP. He concluded by requesting a public hearing to be scheduled with the provisions set forth by staff.

Ms. Brockman clarified with Mr. Blackmer that a letter from the Health Department and the DEP stating that their permits are being processed would not meet the conditions set forth and that the permit numbers would be required to satisfy the conditions.

Mr. P. Taylor asked Mr. Blackmer if each of the referenced conditions would be met one week prior to July 9, 2013.

Mr. Blackmer confirmed that MGM would meet the requirements by the deadline and stated that condition number three (3) had been met. He stated MGM would be served by public utilities and the Health Department would be issuing a permit.

Mr. Pellish inquired as to the purpose of the public hearing in July.

Mr. Blackmer responded that the hearing would allow members from the public to identify any technical issues with the Site Plan.

Ms. Brockman and Mr. Groh stated that Mr. Blackmer was correct.

Mr. Pellish motioned to approve finding the site plans provisionally and conditionally complete in order to schedule a public hearing for July 9, 2013.

Mr. Stolipher seconded the motion, which carried unanimously.

Mr. Phalen re-entered the room at 7:28 PM.

- 5. Public Hearing: proposed text amendments to the following sections of the Zoning and Land Development Ordinance: 2.2, 4.10, 5.7, 5.8, 8.5, 9.5, 10.5, 11.1, and 12.2.**

Mr. Barney stated that the proposed amendments were intended to reduce unnecessary barriers and streamline the ordinance for clarity. He reviewed the following proposed amendments:

Site Plan Requirement (Section 4.10): This amendment would clarify that the site plan must be approved prior to initiation of development.

Restaurants and Convenience Stores in Shopping Centers (Section 5.8C): This amendment would clarify that the Compatibility Assessment Meeting requirement does not apply to a building located within a shopping center shown on an approved site plan for restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area). The shopping center would stand on its own with the expectation that the owner would lease out space to businesses and that those businesses would not be expected to go through the Conditional Use Permit (CUP) process.

Breweries/Wineries/Distilleries (Sections 2.2, 5.7, 8.5): The Zoning Ordinance currently permits "Farm Breweries and Wineries" in the rural district. Distilleries are currently excluded. The County has received a number of inquiries regarding opening distilleries in Jefferson County. This amendment proposes adding the words "or distillery" and increasing the square footage restrictions from 10,000 to 20,000 square feet. Feedback from Bloomery Distillery indicates that 10,000 square feet isn't enough.

Deck setbacks in certain townhome subdivisions (Section 9.5): The Board of Zoning Appeals routinely processes variance requests for deck setbacks in townhome subdivisions, such as Windmill Crossing, that have small lots. This amendment would reduce the rear setback from 20 to 10 feet, if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence.

Receptions and events in rural areas (Section 10.5): Amending this section would eliminate the need for the Conditional Use Permit process, which is not the best fit for allowing special events such as weddings which typically do not require the construction of a permanent structure. The amendment would allow for weddings on a rural property as a special exception that would still need to go before the Board of Zoning Appeals, but would reduce the process to one public meeting rather than two, and also require a significantly shorter public notice period.

Secondary Dwelling Units for Agricultural Purposes (Section 10.5): To meet an increased number of requests to construct small, detached dwelling units for farmworkers or caretakers, the amendment would eliminate the need to go through the subdivision process and allow the request for a second unit to process as a Special Exception that could be approved by the Board of Zoning Appeals.

Parking for seasonal or temporary uses (Section 11.1): This amendment would distinguish between conventional uses (such as retail store) and uses of a more rural or temporary use, such as a farmer's market. The amendment would allow staff to administratively waive traditional parking requirements for seasonal or temporary uses, agricultural uses, events, or other types of uses that do not require parking on a regular basis.

Public notice for zoning map amendments (Section 12.2): Reducing the current notice period from 30 days to 20-28 days would allow for a zoning map amendment case to be scheduled on the next PC meeting following the applicant's presentation of a map amendment petition. The current 30 days requirement makes it such that the applicant has to wait nearly 60 days for the next meeting. State Law does not require posting on the property or mailing notices to adjacent property owners; therefore, this amendment would still be within state law.

Mr. Barney made note of Mr. Eric Lewis' letter submitted in favor of the proposed amendment to Section 10.5 (Special Exception Uses) A and B (particularly B(c)). Mr. Lewis wrote, "We encourage the Planning Commission to recommend approval of and the County Commission to adopt these changes with one exception: We would recommend that specific language be included stating that a formal Site Plan shall not be required for Special Exceptions listed in Section 10.5 ... [as they] are very expensive and time consuming."

Mr. Taylor made record of Mr. Lewis' comments in favor of Section 10.5. Mr. Taylor opened the floor for Public Comment.

Mr. Rob Losey, co-owner of Bloomery Distillery, expressed gratitude to the Planning Commission for working with him to open the distillery. He spoke in favor of the proposed amendments, specifically the amendments related to Section 8.5 (Farm Brewery or Winery). He stated that the proposed amendments would contribute to the success of agritourism, which in turn would increase tax dollar revenue.

Ms. Linda Losey, co-owner of Bloomery Distillery, expressed gratitude to the Planning Commission and staff. Ms. Losey stated that the current size regulation for a production facility of 10,000 square feet should be increased to allow for all necessary amenities required to run a production facility.

Ms. Pam Parziale spoke last. She requested the Planning Commission be pro-active in supporting legislature that supports local economy and entrepreneurial businesses.

Mr. Taylor read aloud the names: Mr. Tom Keefer, Mr. Eric Bell, and Mr. Gary Capriotti. They each stated they no longer wished to speak, stating that their comments had been covered.

Mr. Stolipher inquired as to what the next step would be in moving forward with the proposed amendments.

Mr. Taylor responded that the Planning Commission could recommend changes to the proposed text amendments, or they could adopt the proposed amendment.

Ms. Brockman stated staff could compile comments received and draft a memo reflecting changes to the original amendments so that the Planning Commission could review before submitting to the County Commission for approval.

Mr. Stolipher inquired on the process to reduce the cost of impact fees in the construction of an accessory dwelling unit. He stated that the current fees are high for a small structure serving as temporary residence for farm help.

Mr. Groh explained that an accessory structure would need to include a certain number of rooms and amenities in order to require impact fees. He stated that it may be possible to

amend the regulations for impact fees by requiring accessory units meet specific size and use standards.

Mr. Hayes addressed comments from the Losey's regarding accessory units and commercial square footage. Mr. Hayes suggested amending text to reflect a distinction between detached dwelling units and detached accessory units for agricultural purposes.

Ms. Brockman clarified that typical agricultural uses can have detached structures that do not have to meet any square footage requirements. These structures do require a building permit, but are held under a separate standard.

Mr. Stolipher made a motion that staff compile and summarize comments for review during the July 9, 2013 Planning Commission Meeting.

Mr. Hayes seconded the motion, which carried unanimously.

6. Discussion and possible recommendation regarding the County Commission Motion requesting Planning Commission action related to a proposed draft amendment to the Residential-Light Industrial-Commercial Zone and the Commercial-Industrial Zone.

Ms. Brockman stated that Commissioner Lyn Widmyer requested that Planning Staff research and report back to the County Commission on a possible amendment to the Residential – Light Industrial – Commercial Zone and the Commercial-Industrial Zone. Ms. Brockman invited Commissioner Widmyer to explain the request.

Ms. Widmyer clarified that the recommendation was from the County Commission, which was approved 5-0. She stated that the motion was made in response to the multiple re-zoning requests received over the past year. Ms. Widmyer stated that the recommendation for a proposed amendment would require all Zoning Map Amendment Requests to include a development plan with the intent of reducing concern for types of future development within the neighborhood. She stated that the proposed amendment would not affect current zoning, but would affect applicants requesting re-zoning.

Mr. Pellish stated that it was not always possible to identify intended uses for a location. Mr. Pellish stated that the prior County Commission voted 3-2 to not implement changes to the existing zoning categories because the Comprehensive Plan was being written. He stated that the majority of the applicants requesting re-zoning in previous years notified neighbors of development plans and stated that the Planning Commission should focus on creating new zoning classifications for commercial districts.

Mr. Phillips stated he was in agreement with Mr. Pellish noting that the majority of applicants he had seen over the last year requested rezoning to the Residential - Light-Industrial – Commercial category. The proposed new zoning districts would narrow land uses to specific zoning districts and reduce concern neighbors incur when a property is re-zoned to a broad category such as the Residential-Light Industrial-Commercial zone.

Mr. Stolipher stated he was in agreement with Mr. Pellish and Mr. Phillips.

Mr. Hayes requested additional time to process the differences between the County Commission's motion (Agenda Item 6) and the proposed text amendments to create new commercial and industrial zoning categories (Agenda Item 7). He requested the County Commission's motion be moved to the next meeting scheduled for July 9, 2013. The Planning Commission members were in agreement to postpone the motion.

Mr. Taylor clarified that consideration of the County Commission's motion would be continued to the next Planning Commission meeting on July 9, 2013.

7. Discussion and possible recommendation regarding proposed text amendments to the Zoning and Land Development Ordinance regarding the creation of new commercial and industrial zoning categories and related amendments.

Mr. Barney reviewed the proposed amendments to establish seven (7) new zoning districts. He stated that the new zoning districts would include conditional and permitted uses and that in these districts the noted Conditional Uses would exclude the LESA Point System. Mr. Barney stated that each district would have its own standards for setbacks, height, impervious surface requirements, etc. and that the new zoning districts would not affect existing properties but would affect future zoning and rezoning requests. He stated that the new zoning districts would provide more options to property owners by limiting the types of use permitted. He stated that the existing two (2) commercial districts are too broad and prohibit some property owners from re-zoning due to the uncertainty of future use created when placed in a category permitting anything from single family or multi-family to commercial – industrial uses.

Mr. Barney reviewed the following proposed new zoning districts and changes to appendices: Recommended additional zoning categories are as follows:

1. Neighborhood Commercial (NC) – Neighborhood serving shops and services, compatible with adjacent residential areas.
2. General Commercial (GC) – Retail stores, shopping centers, gas stations, and other general-purpose commercial uses.
3. Highway Commercial (HC) – Land uses appropriate for major highways, including larger retail stores and large gas stations.
4. Light Industrial (LI) – Warehousing, light manufacturing and other land uses that do not produce significant externalities (noise, odors, etc).
5. Major Industrial (MI) – Uses of a more intense nature than would otherwise be permitted in the Light Industrial district.
6. Planned Neighborhood Development (PND) – A district that allows customization of standards in order to provide a better fit for a particular development or piece of property. This district would allow implementation of conditions or restrictions offered by a property owner or developer.
7. Office/Commercial Mixed Use (OC) – A district intended to allow for well-designed employment centers that may also include residential uses.

Ms. Brockman stated that if the Planning Commission preferred some of the seven (7) proposed districts but not all, that it would be permissible to select the ones they preferred rather than rejecting the entire proposal based on one or two things they may not prefer.

Mr. Pellish spoke in favor of the proposed new zoning districts. He stated that the proposed changes were vetted at a number of past public hearings. Mr. Pellish stated he was in favor of holding another public hearing and moving forward with the proposal.

Mr. Stolipher motioned to submit the proposed amendments to the County Commission.

Ms. Truman seconded the motion.

Mr. Phalen stated that he would appreciate additional time to review the proposed amendments.

Mr. Hayes stated he would appreciate additional time to review the proposed amendments to determine whether an additional public hearing should be scheduled.

Mr. Phillips agreed with Mr. Hayes, requesting additional time to review.

Mr. Stolipher and Ms. Truman withdrew the original motion requesting action.

Mr. Hayes made a new motion that this topic be postponed until the next meeting on July 9, 2013.

Mr. G. Taylor seconded the motion, which carried unanimously.

Mr. Phillips requested that Appendix C be formatted to include columns reflecting permitted uses within new zoning districts. Mr. Barney stated he would re-format prior to his resignation for review during the July 9, 2013 Planning Commission Meeting.

8. Discussion and possible recommendation regarding US 340 Improvement Study from south of the Virginia Line to the Charles Town Bypass.

Ms. Brockman provided an overview of the most recent DOH alternatives presented at a public hearing/meeting on June 3, 2013 by the Department of Highways regarding the widening of US 340 South to four (4) lanes. Public comment is open through July 3, 2013. Ms. Brockman stated that it would be appropriate for the Planning Commission to make a recommendation regarding the proposed alignments, or, if preferred, to make broad comments regarding the project, such as the following:

- Commenting on the fact that if a four-lane road is located in this area, it is likely that the adjoining land uses will change and therefore requesting that the DOH take more intense land uses into consideration when designing the road;
- Requesting that if the road is intended to provide a free-flowing corridor that allows traffic to move quickly, the design needs to take into consideration access management principles and be designed in a way to minimize the need for future traffic signals;
- Request that a parallel frontage road be provided for the existing driveways that front on the road now so as to minimize the number of direct accesses to a four-lane road;
- Request that a bike path separated from the road be located along this route to continue the path currently along Rt 9 for the use of Jefferson County citizens and the many tourists that visit the County via non-motorized transit;
- Request landscaping that be provided along the corridor in a way that complements the history and culture of this area of the County;
- Request that the design be sensitive to the significant historic features that are found in this area of the County.

Mr. Pellish stated that the County Commission determined the US 340 South Expansion project a priority item and critical to the development of Jefferson County.

Ms. Brockman stated that if the Planning Commission did not provide comments for the July 3, 2013 meeting, they may not be permitted to make comments later. She stated that

submitting comments related to minimizing access points and the creation of a bike path would make the Department of Highways aware that these items are important to residents in Jefferson County.

Ms. Truman motioned to approve that staff draft a letter for Mr. P. Taylor to sign on behalf of the Planning Commission which would read as follows:

The Jefferson County Planning Commission considers this four lane highway a high priority. We would like a decision to be made expeditiously with consideration to the following points:

- The fact that if a four-lane road is located in this area, it is likely that the adjoining land uses will change and requesting that they take more intense land uses into consideration when designing the road;
- Requesting that if the road is intended to provide a free-flowing corridor that allows traffic to move quickly, the design needs to take into consideration access management principles and be designed in a way to minimize the need for future traffic signals;
- Request that a parallel frontage road be provided for the existing driveways that front on the road now so as to minimize the number of direct accesses to a four-lane road;
- Request that a bike path separated from the road be located along this route to continue the path currently along Rt 9 for the use of Jefferson County citizens and the many tourists that visit the County via non-motorized transit;
- Request landscaping that be provided along the corridor in a way that complements the history and culture of this area of the County;
- Request that the design be sensitive to the significant historic features that are found in this area of the County.

Mr. Hayes seconded the motion, which carried unanimously.

9. Update on the 2014 Comprehensive Plan.

Ms. Brockman stated that this item was included in the director's report.

11. Director's Report.

Ms. Brockman reviewed upcoming meeting dates and stated that the special called meeting scheduled for June 25, 2013 would be located in the second floor Conference Room of the Mason Building at 116 East Washington Street due to the Ethics and Fraud Prevention training scheduled in the library meeting room.

12. Monthly Development Activity Report. *This item has been removed from the agenda at the PC's request.*

13. Planning Commission Exchange and Liaison Reports:

- County Commission – Mr. Pellish: CC is reviewing JCESA Emergency Services Fee and Ordinance.
- Health Department – None.
- Public Service District – None.

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- Parks and Recreation – Mr. G. Taylor mentioned the Mountain Heritage Arts and Crafts Festival on June 14, 15, and 16.
- Jefferson County Development Authority – None.
- Water Advisory Committee – None.
- Planning Commission Exchange – Mr. Stolipher requested the Planning Clerk email Planning Commission members to remind them of upcoming meeting dates every Monday. Mr. Hayes requested it be a monthly email listing dates for the upcoming month.

14. **President's Report.** None.

15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** None.

17. **Signing of approved Motions from previous Planning Commission meetings.**

- Shockey Waiver, PCW13-03

10. **Reports from Legal Counsel and legal advice to Planning Commission.**

Active Litigation:

- Far Away Farms – Open Meetings Act Litigation/Dispute re: public notice of consideration of settlement of FAF litigation (discussion and possible action).

Mr. Hayes motioned that they go into an Executive Session. Mr. Stolipher seconded the motion which carried unanimously. Executive session began at 9:51 PM.

Mr. Hayes motioned to conclude executive session. Mr. Stolipher seconded the motion which carried unanimously. Regular session resumed at 10:08 PM.

Mr. Hayes read the following motion: "On July 26, 2011, Planning Commission went into executive session to receive legal advice. After returning to public session, the Commission voted to authorize counsel to propose a settlement in the Far Away Farms matter (Jefferson County case 11-C-125). In the days after said meeting, the parties to said civil action did agree to a settlement which was accepted by the Circuit Court by order entered August 3, 2011.

While not admitting that any action set forth above violated the Open Meeting Act, I move that we affirm and ratify the prior settlement in the Far Away Farms matter (Jefferson County case 11-C-125) authorized on July 26, 2011 and accepted and entered by the Court on August 3, 2011. I also move that the clerk of this body enter a copy of said settlement in to the official minutes of this meeting."

Mr. Stolipher seconded the motion, which carried unanimously.

- Cedar Meadows Airpark – Litigation re: denial of plat amendment (discussion and possible action).

Mr. Hayes motioned to adjourn the meeting at 10:10 PM. Mr. Louthan seconded, which carried unanimously.