

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
OCTOBER 9, 2012

The Jefferson County Planning Commission met on Tuesday, October 9, 2012 with the following Commission members present: Paul Taylor, President; Eric Smith, Vice President; Morgan Eppers, Secretary; Kelly Baty, Gene Taylor, J.P. Phillips, Steve Stolipher, Daniel Hayes and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephanie Grove, Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. P. Taylor called the meeting to order at 7:11 PM

1. Approval of the minutes for the September 11, 2012 meeting.

Mr. Stolipher moved to approve the minutes of the September 11, 2012 Planning Commission meeting. Mr. Pellish seconded the motion which carried 5 for and 1 abstention (Mr. P. Taylor).

Mr. Rivard provided an update related to the motion made regarding the Sheetz waiver at the last meeting, including updated information after discussion with the WV Department of Highways (WVDOH). He explained that the WVDOH will allow sidewalks in the right-of-way in many areas; however, in the case of Sheetz, the frontage along Washington Street/US 340 is considered "limited access" and is controlled by the Federal Highway Administration for road improvements. He stated that placing a sidewalk within that right-of-way would be difficult and could cause other concerns.

2. Citizens Communication.

Mr. Fred Blackmer, on behalf of Morgan's Grove Market, stated that he had appeared before the County Commission last Thursday to request the creation of a Citizen's Appeal Board for the purpose of mediating issues between applicants and staff when a resolution cannot be met. He reported that the County Commission suggested that he present his request to the Planning Commission. He commented that he has recently faced a series of misunderstandings, miscommunications, and a failure to agree on the interpretations of State code and local regulations in processing his project. He requested to be placed either on the 2nd meeting in October or the 1st meeting in November to discuss the need for an appeal board. He stated he would wait at this meeting so that the scheduling of an agenda item for this cause could be discussed under County Commission Liaison Report.

3. Request for postponement.

Ms. Brockman stated that there was a request for the Aitcheson Rezoning request to be heard at the December 11, 2012 Planning Commission meeting instead of the November 13, 2012 meeting.

Mr. Stolipher moved to postpone the rezoning request to the December 11, 2012 Planning Commission meeting. Mr. Pellish seconded the motion.

Mr. Baty asked the reason behind the request for the postponement. Ms. Brockman explained that there was no current policy that requires the applicant to provide a reason for a request of postponement. Mr. Baty stated concern for allowing applicants to request different meeting dates as it does not seem fair to the public who is expecting that item to be heard at a particular meeting. Ms. Brockman reported that no adjoining letters or advertisement had been posted yet for this particular request.

Mr. Hayes entered the room at 7:19 PM.

The motion carried 6 for, 1 opposed (Mr. Baty), and 1 abstention (Mr. Hayes).

4. **Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 7, Parcels: 24 and 26. This property is currently zoned Rural and Residential/Light Industrial/Commercial zoning is being requested. This property is located on the intersection of US Route 340 and Washington Street in Harpers Ferry and is a total of 2.39 acres. The owner of record is the Bank of Charles Town (BCT).**

Mr. Rivard described the location of the property and discussed the Planning Commission's role in this request.

Mr. Eric Smith entered the room at 7:26 PM.

Ms. Annette van Hilst, the applicant's representative, gave a detailed presentation by Power Point. She described the location of the property, showed pictures of the property and detailed how the request was consistent with the 2004 Comprehensive Plan. She reported that the reason for the request was due to the location of the property at a major intersection with a main road leading directly to Harpers Ferry. She stated that it is within the growth area outlined by the 2004 Comprehensive Plan and has access to water and sewer. She commented that the site is appropriate for urban development and is within walking distance to many public buildings.

Mr. Bob Baronner, President of BCT, stated that many people in the room wearing BCT buttons were employees there to show support of the request. He briefly described the charities that BCT donates to, the number of employees and the benefits they receive, and the money given to local citizens to build homes and start businesses.

Mr. J.P. Burns, life-long resident of Jefferson County and BCT board member, gave some history of the bank. He gave several statistics of the success of BCT and stated that many of the dividends are given back to the community. He commented that BCT is a good corporate partner and asked that the request be given fair consideration.

Mr. Keith Berkeley, a local veterinarian and BCT board member, described the number of BCT employees and that 5 million dollars in wages and benefits are paid by BCT every year. He commented that BCT employees participate frequently in community services and have logged more than 2,000 hours to such events since the beginning of the year.

Mr. Rivard gave his staff report and stated that staff recommends that the Planning Commission find that the request is consistent with the 2004 Comprehensive Plan and forward that recommendation to the County Commission. He stated that the staff finds the request in conformance with the 2004 Comprehensive Plan as found within the staff report. He commented that staff suggested that the applicant consider the surroundings of the property when deciding on architecture, landscaping, signs and lighting standards. Mr. Rivard noted that the Planning Commission may decide to recommend denial of this request due to the historic, natural and cultural resources of this property.

Mr. P. Taylor opened the public hearing.

Mr. Scott Faulkner, representing the Friends of Harpers Ferry, Journey through Hallowed Ground, and the Civil War Trust, distributed a document outlining his comments. He stated that if BCT wanted to build on this property then they would have used the Conditional Use Permit (CUP) process. He commented that the property had been included in the National Park Boundary since 1955. He discussed the significant, multiple layers history of battles which occurred on this property. He reported that Harpers Ferry National Historic Park had attempted to buy the property to incorporate it into the preserved battlefield and that BCT outbid them 4 hours before closing. He stated that if the site were to be used for a facility such as Sheetz, or any other food service, or any store to buy tourist collectibles, then a great disservice would be done to the small businesses in the towns of Bolivar and Harpers Ferry. He urged the Planning Commission to recommend denial of this request stating that the property should remain rural and should be purchased by preservation groups.

Mayor Joe Anderson, mayor of Harpers Ferry, stated that the site is entirely surrounded by park service lands, battlefields, and low intensity single family homes. He commented that commercial use of this property would have a very distracting effect on the otherwise rural, historic character of this area. He reported that the National Park Service had been in the process of negotiating for this property. He stated that BCT should use available commercial lands to develop commercial uses. He raised concern regarding existing traffic issues worsening. He also stated that Harpers Ferry would be required to manage the water and sewer used at the site and requested that the Planning Commission consider the opposition of the City of Harpers Ferry. Mayor Anderson reported that this property should be incorporated into the park lands to preserve its rural and historic nature.

Mr. Andrew Lee, Resource Manager for the National Park Service in Harpers Ferry, read from a letter penned by Rebecca Harriett, Superintendent of the National Park Service. He reported the opposition of the National Park Service and stated it is not consistent with the 2004 Comprehensive Plan. He commented that commercial use on this property would have significant negative impact on historic and scenic values.

Mr. David Hammer, Legal Counsel for the City of Bolivar, stated that the burden of proof of need for the request is on the applicant. He raised concern regarding a letter of support submitted by the Jefferson County Development Authority (JCDA) and stated that the letter contained no mention of the National Park Service or the millions of tourist dollars brought to this area by the National Park Service. He reminded the Planning Commission that, when

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the US 340 Gateway Study issues were being surveyed through MetroQuest, Jefferson County citizens placed the importance of historic and natural resources over retail and commercial development. He reported that citizens also place high importance on traffic safety and travel which will be negatively impacted by a rezoning of this property. He commented that recommending approval of this request is irrational without knowing the future use and the applicant has not met the burden of proof. He urged the Planning Commission to recommend denial of this rezoning and stated this site should remain rural due to its historic surroundings.

Mr. Mike Kennedy, a member of the Harpers Ferry Planning Commission, distributed a report to the Planning Commissioners that showed pictures of the surrounding areas of the property and detailed reasons for recommending denial of the rezoning request. He stated that there has not been significant change in the area since Jefferson County adopted the Zoning Ordinance in 1988. He explained why the request is inconsistent with the 2004 Comprehensive Plan and with the Jefferson County Zoning and Land Development Ordinance citing specific sections of those documents. He requested that the letter of support submitted by the JCDA not be considered as he feels it is based on flawed guidelines.

Ms. Sheila Scoville, resident of Bolivar, stated that the rural character of the area would be destroyed with the greed for commercialization if this rezoning request is approved. She urged the Planning Commission to think about the future and to recommend denial of this request.

Ms. Budge Blake, resident of Bolivar, relayed that she had been a member of the Planning Commission and had also been a member of the Bolivar Planning Commission. She stated that BCT had mentioned that the property may be used as a place where tourist could buy trinkets. She rebutted that there were already plenty of shops in the cities of Bolivar and Harpers Ferry where trinkets could be purchased.

Mr. Jerry Hutton, resident of Harpers Ferry and member of the Harpers Ferry Town Council, discussed his opposition to the request. He commented that approval of the rezoning request would detract from the rural and historic values of the area.

Ms. Barbara Humes, resident of Jefferson County, asked that common sense be used in determining the recommendation for this request. She stated that rezoning this property would not be in the best interest of this community and feels that, if approved; there would be increased traffic, trash, and stormwater management issues. She commented that she has spoken of this request to many visitors to Harper's Ferry who also adamantly oppose the rezoning.

Mr. Mark Dyck, on behalf of the Jefferson County Development Authority, read the letter of support that was included in the packet sent to the Planning Commissioners. Additionally, he commented that he sees an "any change is bad" attitude in the County and would like to see citizens work with the owners on appropriate changes and uses for this property.

Ms. Victoria Drumheller, resident, stated that she owns business property in the area and raised concern over the potential lighting of the property in question.

Mr. Hayes moved to close the public hearing. Mr. Stolipher seconded the motion which carried unanimously.

Ms. Van Hilst rebutted. She stated that she respects the opinions that were discussed. She stated that the proposed use should not be discussed as a part of the rezoning request since that is a part of the site plan process. She also commented that BCT had been and would be willing to consider selling the property to a historic preservation agency if a reasonable offer were to be proposed. She stated that such an offer had not been submitted by any person or agency.

Mr. Stolipher moved to recommend approval of the request to rezone this property from Rural to Residential/Light Industrial/Commercial to the County Commission. Mr. Pellish seconded the motion.

Ms. Eppers stated that the Planning Commission needs to look at all the permitted uses and determine if each falls within the guidelines of the 2004 Comprehensive Plan. She commented that she does not believe that all the uses would be appropriate for this site.

Mr. Pellish stated he feels this request clearly fits the guidelines of the 2004 Comprehensive Plan. He commented that BCT has property rights and that they should be able to do whatever they like with that property that falls within state and local regulations. He stated that the National Park Service should offer a reasonable bid for the property if they would like for it to be preserved. He voiced his support.

Ms. Eppers asked for the list of potential uses to be displayed from the PowerPoint and reiterated that she did not feel that all of these uses would be appropriate for that site or fall within the guidelines of the 2004 Comprehensive Plan. She commented that she may be more comfortable allowing one of the proposed new commercial categories if they are approved. She stated that this category is way too broad for this property location.

Ms. Brockman reminded the Planning Commission that their role was to vote on a recommendation to the County Commission regarding whether the request is in conformance with the 2004 Comprehensive Plan. The County Commission would then hold another public hearing before making their decision.

Mr. Hayes stated that he would not look at the request as a worst case scenario. He commented that certain uses would be prohibited by the small size of the property.

Mr. Baty stated that he agreed with Ms. Eppers that the category of the requested zoning is too broad.

Mr. Stolipher repeated the motion. Mr. P. Taylor made a friendly amendment to add "in accordance with the staff recommended motion". (Attached)

The motion carried 5 for, 4 against (Mr. Baty, Mr. P. Taylor, Mr. Smith, and Ms. Etters).

Mr. P. Taylor called for a break at 9:05 PM. He called the meeting back to session at 9:13 PM.

5. Reports from Legal Counsel and legal advice to PC.

Active Litigation:

- **Far Away Farms**
- **Cedar Meadows Airpark**

Ms. Grove stated that Mr. Stephen Groh was working on the brief for Far Away Farms that would be due this week.

Ms. Grove reported that the case of Cedar Meadows Airpark had been continued until the additional litigation concerning the ownership of the property had been resolved.

6. Director's Report.

Ms. Brockman discussed the website created for public outreach regarding the 2014 Comprehensive Plan efforts. She stated the website is titled "Envision Jefferson 2035" and encouraged Planning Commission members to sign up to follow the page. She also reported that a Facebook page was created for the purpose of posting upcoming events.

Ms. Brockman stated that the 2-year Comprehensive Planner position had been approved by the County Commission and approximately 30 applications had already been received. She reported that the resumes would be reviewed then interviews held in late October.

Ms. Brockman commented that a Steering Committee would be established to assist in the creation of the 2014 Comprehensive Plan. She stated the committee would be comprised of two citizens from each County Commission district and 1 to 3 at-large members and each person would be chosen by the County Commission. She anticipated a kick-off meeting for this committee by mid-November.

Ms. Brockman reported that staff is looking at the benefits versus the cost of hiring a facilitator. She stated that staff had contacted some facilitators who would generate a cost estimate for the department. She commented that if a facilitator were hired, that person would be solely utilized for public meetings.

Ms. Brockman mentioned that an article in the paper reported that the homeowner's of Ryan's Glen are upset by the proposed WVDOH 4-Lane Project on US 340 South which extends from the current 4-lane highway to the Virginia line. She stated that the homeowners of Ryan's Glen were not aware of the project when they bought their homes even though studies were underway at that point. She reported that the homeowners are upset that the Planning Commission and staff approved the subdivision knowing studies were being done to place a highway through that land. She also commented that the homes were built when the market for homes was better and that selling now would mean a loss of money for the

homeowner. She stated that the Planning Commission would not have been able to deny a subdivision on the grounds that a potential highway may be built someday.

Ms. Brockman stated that staff had initiated discussion with State Transportation Officials regarding possible uses for additional funds provided by the Easter Panhandle Transportation Authority for the study of US 340 South.

Ms. Brockman reviewed the upcoming Planning Commission meetings.

7. Monthly Development Activity Report.

Mr. Rivard presented the October Monthly Development Activity Report.

8. County Commission Liaison Report.

Mr. Pellish stated that the County Commission would make a request for the WVDOH to come in and have a discussion regarding better communication between the agencies.

Mr. Pellish reported that the County Commission had a lengthy discussion regarding the request presented by Mr. Peter Corum and Mr. Fred Blackmer to establish another body to resolve potential conflicts between staff and applicants. Mr. Pellish stated that he felt that would be the wrong approach and would complicate the process. Mr. Pellish requested that Mr. Blackmer's request be placed on the 1st meeting in November for discussion of how issues could be resolved in the future. He suggested that Mr. Blackmer make a presentation at the November 13, 2012 meeting.

9. Planning Commission Exchange.

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** None.
- **Report from the Parks and Recreation Meeting Liaison.** None.
- **Report from the Jefferson County Development Authority Meeting Liaison.** None.
- **Report from the Water Advisory Committee Meeting Liaison.**

Mr. Baty reported that Ms. Alana Hartman, of the WV Department of Environmental Protection, had spoken to the Water Advisory Committee on September 17, 2012 regarding the Chesapeake Bay Watershed Implementation Plan Phases II and III. He stated that discussion topics included financing, concentrated animal feeding operations (CAFOs), other sources of nitrates, and stormwater management. He stated that there would be an event on December 5, 2012 at a place to be determined for public outreach of how the Chesapeake Bay Watershed Implementation Plan would be enacted.

10. President's Report. None.

11. Actionable Correspondence. None.

12. Non-Actionable Correspondence. None.

Mr. Hayes moved to adjourn the meeting at 9:35 PM. Mr. G. Taylor seconded the motion which carried unanimously. An audio recording and/or a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.