

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
MARCH 8, 2011

The Jefferson County Planning Commission met on Tuesday, March 8, 2011, with the following Commission members present: Daniel Hayes, Vice-President; Morgan Etters, Secretary; Gene Taylor, Kelly Baty, Eric Smith and Arnold Dailey. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Walt Pellish was present via telephone.

John Maxey and Tom Trumble were absent with notification.

Mr. Hayes called the meeting to order at 7:05 PM.

1. **Approval of minutes for the February 8, 2011 meeting.**

Mr. Hayes recommended an amendment on page 4, first line to change to spelling of *Principle* to *Principal*. Mr. Taylor moved to approve the minutes with the suggested change. Mr. Dailey seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

3. **Request for postponement:** None.

4. **Concept Plan Review for Paynes Ford Station (PC File #10-12). This property is located at the intersection of Paynes Ford Road and Bowers Road. This project consists of a residential subdivision to include a total of 36 residential lots, a reside parcel, open space parcel, stormwater management parcel, right-of-way dedications and internal roadways on 141.6 acres located in Tax District: Middleway; Tax Map: 6; Tax Parcel: 8.**

Mr. Rivard explained the Concept Plan process. Mr. Mark Dyck, with William H. Gordon, Associates, described the project for the Planning Commission. He reviewed, in detail, the conditions that were placed on the project by the Board of Zoning Appeals in 2008 upon issuance of the Conditional Use Permit. Mr. Baty inquired as to whether Mr. Dyck's role as the President of the Economic Development Authority posed a conflict of interest. Mr. Hayes confirmed that Mr. Dyck had fully disclosed his positions. Ms. Brockman explained that this was a residential development and not an economic development.

Mr. Rivard reviewed what process the project had already completed and what processes were to occur next. He read from his staff report stating that staff finds the application complete.

Mr. Hayes opened the public workshop. (Please see attachment for detailed comments.)

Mr. Scott Chapman, area resident, asked if the Voluntary Remediation program was for the entire property or if it limited to the part of the parcel being developed. Mr. Dyck clarified that the remediation would be for only the part of the property being developed.

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Mr. George Nichols, area resident, raised concerns of arsenic, DDT, and lead levels that may be emitted when soil is disrupted.

Ms. Jennifer Syron, resident of Chapel View, asked several questions covering topics of cable installation, percussion drilling, Karst, school bus schedules and bus stops, bus shelters, development entrances and exits, safety hazards of Duffy's Cavern, Emergency Responders, details of future Homeowner's Association and its covenants, and stormwater management.

Ms. Barbara Fuller, also a resident of Chapel View, questioned whether Paynes Ford Station would be paying Orchard Knolls for the opportunity to hook up to the sewer and water lines in Chapel View, what amount would be paid, and when the payment would occur. She also commented that there was a crowding of homes on one side of the property and asked if an appeal would be filed to eventually build more homes on the residue. She raised concern that the elevation of Paynes Ford Station was higher than that of Chapel View and requested that stormwater management issues be addressed to prevent Chapel View properties from being flooded.

Mr. Mark Eddy, neighboring property owner, stated that he was under the impression that conditions placed on the Conditional Use Permit would have increased the lot sizes to greater than 3 acres each. He asked if the residue would be developed in the future to include more houses. He also suggested that neighboring properties be more thoroughly notified for future projects.

Mr. Taylor moved to close the public workshop. Mr. Dailey seconded the motion which carried unanimously.

Mr. Eric Smith entered the room at 8:05 PM.

Mr. Dyck responded in general to several of the comments. He stated that lead and arsenic levels are tightly bound to the soil and that the Department of Environmental Protection would be involved in monitoring levels. He commented that, in regards to the development of the remaining residue, there were no remaining development rights. However, if the regulations were to change or the County would rezone the property, the parcel would hold the same rights to develop as any other residue in Jefferson County. In regards to the size of the lots, Mr. Dyck commented that the development plans had been reviewed with county staff and legal counsel and that the lot size depicted on the Concept Plan was a requirement for the community to be a water and sewer development. He confirmed that the site is Karst and that there was a cavern on the property that was on the Berkeley County side of the development. He stated that there was concern that if it were fenced for safety then children could climb to get in but then be unable to get out. Mr. Dyck agreed that bus shelters were a good idea but felt that it should be a requirement for all developments and written into the Subdivision Regulations. Concerning stormwater management, he stated that no more rate of water can flow off the site after development as before development and that the stormwater management pond would have a liner so that there would be no infiltration.

Mr. Hayes suggested that the Planning Commission give direction at a special-called meeting on March 26, 2011. He requested that the public comment be consolidated in a report which should include a staff recommendation. Mr. Dyck asked that the report be submitted to the applicant so that the applicant could respond at the next meeting.

Mr. Smith moved to take no action at this meeting, have staff summarize the given public comment, and to reconvene at a special-called meeting on March 26, 2011. Mr. Taylor seconded the motion which carried unanimously.

5. Request by Thomas J. Kiefer for a waiver from Subdivision Ordinance Appendix B:

- **Section 2.2 (Street and Road Requirements) to be allowed to use the existing at grade driveway;**
- **Section 2.3 (Access to Public Roads) to allow an asphalt entrance apron instead of concrete;**
- **Section 2.5 (Internal Driveway) and Section 9.4 (Minimum Driveway Width and Maximum Driveway Slope Requirements) to increase the maximum allowed slope from 8% to 15% and to waive the width requirement to prevent disturbing the existing vegetation;**
- **And Section 4.3 (Stormwater Management) to waive the requirement to provide stormwater management for all areas of the site that are to be disturbed.**

This property is located at 16357 Charles Town Road and is designated as Tax District: 2, Map: 19, Parcel: 17.6.

Mr. Rivard noted that Planning Staff would only address the waiver requesting relief from the width of the access road. He read from his staff report recommending approval of the waiver from Section 2.2 with a condition that the access width be 22 feet from Route 9 to the top of the incline and from the bend in the access to the parking area on the property. Mr. Rivard then differed to Engineering. Mr. Saunders read from his staff report and recommended approval of the waiver from Section 2.3 if the applicant meets or exceeds the standard specified in R-05B of the Jefferson County Standard Details. He recommended denial of the waivers requested for Sections 2.2, 2.4, 4.3, and 9.4 stating that of the four requirements for granting a waiver, three of the requirements were not met.

Mr. Rivard reminded the Planning Commissioners of written comments regarding this item that were submitted to the Planning and Zoning office earlier that day by Gene Armstrong on behalf of Thomas W. Weller, adjoining property owner. These comments sited several concerns that Mr. Weller had regarding the proposed use on the property and requested for the Planning Commission to visit the site before granting any variances.

Mr. Thomas J. Kiefer and Ms. Linda Losey, owners of the property, gave a visual presentation to the Planning Commission describing the mini-farm distillery being proposed for that site and the layout of the property. Ms. Losey described the waiver requests and the reasons they believed those waivers were needed.

Mr. Hayes opened the public hearing. Mr. Gene Armstrong, representing adjoining property owner, Mr. Thomas Weller, stated that the property had been timbered and raised concern that there were three streams on the property that may be affected by development. He stated

that Mr. Weller may again raise cattle on his property in the future and would like the streams protected. He also stated that the posted notice was not on the correct parcel. Mr. Armstrong stated that Mr. Weller has rights to use the access easement and to cross a neighboring property to gain access to another parcel he owns behind the applicants parcel and was concerned if there would be enough space for his tractor and for traffic to pass on the access easement.

Mr. Nick Frobouck, previous owner of the applicant's property, clarified that the only running water on the property was what was under the entryway. He stated that he had the road built and that there was 12" of shale on the access. He raised concern that there had never been cattle there since he could remember and that the issues being raised by Mr. Armstrong for Mr. Weller may be personal. Mr. Armstrong commented that was false.

Mr. Dailey moved to close the public hearing. Mr. Taylor seconded the motion which carried unanimously.

There was discussion regarding the current width versus the required width of the access road.

Mr. Smith moved to grant the waiver of Section 2.2 to allow use of the existing at-grade driveway with the exceptions that it be widened to 24 feet from Route 9 (from the edge of the apron) to 10 to 15 feet beyond the adjoining driveway and that the road depth is certified by an engineer to be acceptable and if not acceptable then to add stone to existing shale or to replace the shale if necessary because it is in conformance with the four criteria as written in Division 24.300 of the Subdivision Regulations. Mr. Taylor seconded the motion. Mr. Hayes offered a friendly amendment to widen the road to 18 feet at the corner point, or bend, of the easement to the parking area. Mr. Taylor and Mr. Smith accepted the friendly amendment. Mr. Dailey asked if any increase in parking would require a site plan and raised concern that granting the variance may cause problems in the future if the site were to have expanding improvements. Mr. Hayes called to question. The motion carried 5 for and 1 opposed (Mr. Dailey).

Mr. Smith moved to grant the waiver of Section 2.3, Access to Public Roads, to allow an asphalt entrance apron instead of concrete because this waiver is in conformance with the four criteria as written in Division 24.300 of the Subdivision Regulations. Mr. Dailey seconded the motion which carried unanimously.

Mr. Smith moved to grant the waiver of Section 2.5, Internal Driveway, and Section 9.4, Minimum Driveway Width and Maximum Driveway Slope Requirements, to increase the maximum allowed slope from 8% to 15% and to waive the width requirement to prevent disturbing the existing vegetation because this waiver meets the four criteria. Ms. Etters seconded the motion which carried unanimously.

Mr. Smith moved to grant the waiver of Section 4.3, Stormwater Management, to waive the requirement to provide stormwater management for all areas of the site that are to be disturbed because it meets the four criteria for such a waiver. Mr. Taylor seconded the

motion. Mr. Dailey asked for clarification from Mr. Saunders as to why the Engineering Department was against this waiver. Mr. Saunders explained that the Subdivision Regulations state that curb and gutter are not required if the site uses Low Impact Development (LID) techniques and that the LID techniques should be required if this motion is granted. The motion resulted in indecision. (Mr. Taylor, Mr. Hayes, and Mr. Smith were for the motion. Mr. Dailey, Mr. Baty, and Ms. Etters were opposed to the motion.) There was discussion clarifying that since the motion did not pass, the Subdivision Regulations would be required to be followed, however, LID techniques outlined in the Subdivision Regulations could be used.

6. Public Hearing for Proposed Text Amendment for Section 20.203 and Definition of Major Site Plan and Minor Site Plan of the Jefferson County Subdivision Regulations.
Mr. Rivard reviewed the proposed text amendment. Mr. Hayes opened the public hearing.

Ms. Barbara Scott, owner of Summit Point Raceway, voiced support of the text amendment and stated that it should move forward as quickly as possible.

Mr. Mark Dyck, President of the Jefferson County Development Authority, stated that this amendment was critical to economic development in the county. He commented that the county could lose businesses due to the length the process would take if the text were to stay the way it is currently written.

Mr. Jason Gerhardt, of William H. Gordon Associates, gave examples of projects the company is currently working on and the problems they have face with the current wording of the text. He voiced support of the amendment.

Mr. Pete Kubic, Kubic Construction, also voiced support of the amendment to prevent the length of the process as it is now. He commented that there needs to be a “fast-track” approval process for businesses.

Mr. Dailey moved to close the public hearing. Mr. Taylor seconded the motion which carried unanimously.

Ms. Brockman made a correction to both of the Major Site Plan and Site Plan, Major definitions within the memo. She stated that “B” and “C” of those definitions should be combined with the word “except” connecting them.

Ms. Etters moved to forward the amendments to County Commission with the correction made by staff. Mr. Dailey seconded the motion which carried unanimously.

7. Discussion and vote regarding Draft Policy Neutral Zoning Ordinance Amendments and the possible scheduling of a public hearing.

Mr. Barney reviewed the amendments and changes that had been made to the document. He explained what next steps could be to the Planning Commission. Mr. Hayes stated that it would be appropriate to continue this discussion at a work session to be held at the March 22, 2011 Special Meeting.

8. **Report on the US 340 Corridor East Gateway Plan – Overview of Planning Process and the 03/26/2011 Kick-off Meeting.**

Ms. Brockman gave a short presentation on the plan for the March 26, 2011 Kick-off Meeting and stated that staff had sent over 1,800 letters of invitation to the meeting.

9. **Discussion regarding Planning Commission Bylaws.**

Ms. Brockman explained that the Planning Commission Bylaws as written did not include an attendance policy. She stated that most bylaws contain that information and that it should be discussed with the new Planning Commissioners that were to be appointed on March 31, 2011.

10. **Reports from Legal Counsel and legal advice to PC.**

- **Discussion and vote on Finding of Fact and Conclusions of Law for the denial of a requested time extension for Far Away Farms.**

Mr. Groh explained to the Planning Commission that a quorum of the Planning Commission of the members that were present at the December 14, 2010 meeting are required to be able to vote on the Findings of Fact for Far Away Farms. This item was postponed to the March 22, 2011 Special Meeting.

11. **Director's Report.**

- **Activity Reports.** The activity reports were provided in the agenda packets.
- **Update on Blue Ridge Mountain Communities Watershed Final Citizen's Committee meeting (held 2/26/11) and potential next steps.**
Ms. Brockman reported that the work with the Citizen's Committee had been completed and that staff had encouraged them to continue on with a citizens' effort. She stated that staff would provide as much support as possible.
- **Report on Home Occupation/Cottage Industry Roundtable Discussion (held 3/1/11)**
Ms. Brockman described the Roundtable Discussion and reported that substantial public comment had been received. She confirmed that all critical staff would meet to discuss the comments.
- **Update on Annual Report Subcommittee**
Ms. Brockman stated that, since the Annual Report Subcommittee had dissolved, she would leave it up to the Commissioners to reinstate the subcommittee if they felt necessary. Mr. Hayes commented that he would leave that up to the discretion of Mr. Trumble.
- **Budget/Work Plan Submission**
Ms. Brockman reported that the Budget/Work Plan had been submitted to the County Commission on February 14, 2011.
- **Staff involvement in the Regional Planning Conference to be held in Cumberland, MD, May 5-6, 2011**
Ms. Brockman informed the Planning Commission of the conference and stated that she would relay information as it became available.
- **Recent CC agenda items.** None reported.
- **Upcoming CC agenda items**

Ms. Brockman stated that she would be informing the County Commission on the Urban Tree Canopy updates and the kick-off of the US 340 Study on Thursday, March 10, 2011. She reported that the Wireless Telecommunication amendments, the Urban Growth Boundaries, and the department fees would be discussed at the March 17, 2011 County Commission meeting and she would also take the referral for the Subdivision Regulations that were discussed earlier to that County Commission meeting.

12. **County Commission Liaison Report.** Mr. Pellish complimented Mr. Hayes on his role as acting Chairman for the meeting and he thanked all in attendance for their hard work.

13. **Planning Commission Exchange.**

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** A report provided by Mr. Hayes via e-mail was included in the packet.
- **Report from the Jefferson County Development Authority Meeting Liaison.** None.
- **Report from the Water Advisory Committee Meeting Liaison.** None.

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

15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** Ms. Brockman presented a letter from Mr. Maxey stating that he did not intend to reapply to the Planning Commission.

Mr. Taylor moved to adjourn the meeting at 11:01 PM. Mr. Smith seconded the motion which carried unanimously. A detailed transcript of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.