

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 12, 2011

The Jefferson County Planning Commission met on Tuesday, June 28, 2011, with the following Commission members present: Daniel Hayes, President; Morgan Eppers, Secretary; Gene Taylor, Kelly Baty, Ed Burns, Paul Taylor, Eric Smith, and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jonathon Saunders, County Engineer; Stephan Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Arnold Dailey was absent with notification.

Mr. Hayes called the meeting to order at 7:00 PM.

1. **Approval of the minutes for the June 28, 2011 meeting.**

Mr. G. Taylor moved to approved the June 28, 2011 Planning Commission Meeting minutes. Mr. Pellish seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

3. **Request for postponement.**

Mr. Hayes announced the postponement of the Zoning Map Amendment for the Hott property from July 26, 2011 to August 9, 2011.

4. **Postponed from the June 14, 2011 Planning Commission Meeting: Concept Plan Review for Highland Farms (PC File #11-02). This property is located on Charles Town Road (Rt. 9) on the west side of Bloomery Bridge. This project consists of a residential subdivision to include a total of 27 residential lots and a residue parcel on 270.18 acres under the cluster provisions of the Zoning and Land Development Ordinance Section 5.7(d)(2) and is located in Tax District: Charles Town; Tax Map: 19 Tax Parcel: 33, 38 and 41.**

Mr. Baty recused himself due to personal involvement and left the room.

Mr. Rivard read from his staff report and stated that staff finds the application complete. He reviewed agency comments in which he stated that the WV Division of Culture and History strongly suggest that a Phase I Archeological Study be done on the property before development.

Mr. John Sekerak, Land Use Planner and Landscape Architect with Greenhorn and O'Mara representing the applicant, described the project and provided a visual presentation of the 27 lot clustered subdivision. Mr. Sekerak mentioned that the project may be completed in phases if financially necessary. He stated that since it would be unlikely to find archeological resources in the area being developed, a Phase I archeological study would be costly and unnecessary. However, Mr. Sekerak reported that the applicant would be willing to cease all development if any element of archeological value were discovered and notify the proper State Historical agencies.

Mr. Smith entered the room at 7:17 PM.

Ms. Etters expressed concern about the lack of shoulder area along the frontage of the property. Discussion ensued regarding the possibility of shoulder improvements in that area.

Mr. Sekerak described the stormwater management plans for the property.

Mr. Hayes opened the public workshop.

Ms. Barbara Fry, neighbor, inquired as to how her property may be impacted with specific regard to her access easement. Mr. Herb Jonkers, applicant, assured Ms. Fry that there were no plans to terminate that right-of-way agreement.

Ms. Nance Briscoe, representing the Eastern Panhandle Organization of Home Owners Associations, detailed several questions:

- What is the intended use for the residue and when will it be handed over to the Home Owners Association (HOA)? Will the County and Developer guarantee in writing that this residue parcel remains a residue parcel in perpetuity and is not subject to further development if and when zoning laws change?
 - Mr. Hayes explained currently there would be no more development rights on this property however; a guarantee could not be granted that future changes in the zoning or subdivision regulations would prevent a further development.
- Is it premature to approve a concept plan without prior approval of the Health Department?
 - Ms. Brockman explained that Health Department permits would be necessary with the review of the preliminary plat.
- Will the developer work with the Board of Education to ensure that the roads meet the design specifications required by the bus department?
 - Ms. Brockman explained that it was not within the Planning Commission's authority to impose that condition although the developer could be advised to contact the Board of Education.
- Will this development be considered a limited expense community?
 - Mr. Hayes clarified that the Planning Commission could not impose conditions related to the HOA.
- Will the developer be working with Comcast to pre-install cable or fiber? If so, will the plans for those facilities be approved by the appropriate state and local authorities regarding archeological preservation?
 - Mr. Hayes stated that the developer would be asked if Comcast would be contacted. He also explained that, if any archeological preservation conditions would be imposed, it would be for the entire site and not just related to dry utilities.
- Are there karst and/or limestone in the area to be developed? If there is karst and/or sinkholes discovered, will potential homebuyers be notified in advance of the purchase?
 - Mr. Hayes stated that the applicant would be requested to respond to those questions.

Ms. Susan Rissler-Sheely spoke in support of the project.

Mr. Burns moved to close the public hearing. Mr. Pellish seconded the motion which carried unanimously.

Ms. Susan Rissler-Sheely discussed an archeological study done in 2005 and stated that she feels any historical items would be found closer to the river which is the area that is not being disturbed.

Mr. John Sekerak reported that he had not observed any Karst on the site.

Mr. Herb Jonkers, manager of Highland Farms, LLC, stated that the only sinkholes that are evident on the property are in the lower area which is not being developed. Mr. Jonkers stated that potential homebuyers would be notified of known sinkholes. He reported that he would be working with dry utility providers as that is a requirement. Mr. Jonkers stated that the development would be geared, in price and amenities, toward adults and does not feel that buses will be an issue for the community.

Mr. Pellish moved to approve the concept plan. Mr. Burns seconded the motion.

Mr. P. Taylor moved to amend the motion to require the applicant, upon discovering any items of archeological significance during excavation, to cease work and to inform the State Historic Preservation Office of said findings for investigation. Ms. Etters seconded the motion which carried unanimously.

Ms. Etters moved to further amend the motion to require the shoulders immediately along the frontage of the property to be widened 8 feet unless the Department of Highways specifically denies that widening in writing. Mr. G. Taylor seconded the motion which carried 6 for and 1 opposed (Mr. Hayes).

Mr. Hayes called the question of the main motion which carried unanimously.

Mr. Baty entered the room.

5. **Concept Plan Review for Middleway Volunteer Fire Company (PC File #S11-06). This property is located east of the Leetown Road and Cedar Hollow intersection. This project consists of a 5,025 sq. ft. fire station with office and a 4 bay garage in phase I and in phase II, a 3,975 sq. ft. addition consisting of a multipurpose room and 2 additional bays on 5 acres located in Tax District: Middleway; Tax Map: 24 Tax Parcel: 2.**

Mr. Rivard read from his staff report emphasizing that only phase I was being reviewed and that phase II would be submitted separately. He reported that staff found the concept plan to be complete and recommended that the project use the minor process once the single family restriction is lifted through the public workshop and approval of the concept plan.

Mr. Matt Cesna, Professional Land Surveyor of Frederick, Seibert and Associates, described the project. He reported that the stormwater management would be handled through a stormwater management pond on the site. Mr. Cesna stated that the access road would be widened to 24 feet using gravel to accommodate the traffic for the fire hall.

There was discussion regarding whether or not the road should use pavement instead of gravel.

Mr. Mike Mood, with Middleway Fire Company, stated he prefers no paving due to the additional cost. He stated that the fire hall will only average approximately 15 calls per month. Mr. Mood stated that both phases were being requested to be reviewed as it was decided to not break the project into phases.

Mr. Baty questioned the applicant as to the reason that no signs were posted. Mr. Mood maintained that the sign was posted across from Mike's Trailer Court as directed by staff.

Mr. Baty asked how chemicals used for or washed off of the vehicles would be managed to protect the creek beds. Mr. Mood stated that he believed a grease trap would be used to prevent contamination of the creek beds.

Mr. Hayes opened the public hearing. There was no comment. Mr. Burns moved to close the public hearing. Mr. G. Taylor seconded the motion which carried unanimously.

Mr. Baty moved to recommend that a condition be made that issues regarding handling and disposal of hazardous materials be resolved in accordance with federal, state, and local codes and regulations and that approval from these agencies be received. Ms. Etters seconded the motion which carried 7 for and 1 opposed (Mr. Hayes).

Mr. Baty moved to recommend that the county requirements be followed regarding the upgrade of the access easement. The motion failed for a lack of a second.

Mr. Smith moved to approve the concept plan with the above mentioned condition. Mr. Pellish seconded the motion which carried unanimously.

6. Public Hearing for Proposed Text Amendment for Sections of Article 24 of the Jefferson County Subdivision and Land Development Regulations (Aug. 19, 2010) regarding timeframes and noticing requirements for processing procedures.

Mr. Rivard reviewed the amendments stating that the purpose of these amendments were to shorten the timeframes of the process.

Mr. Hayes opened the public hearing.

Mr. Jason Gerhardt, of William H. Gordon, Associates, distributed comments regarding the amendments. Mr. Gerhardt made several suggestions:

- He discusses eliminating the public hearing for preliminary plat stage of the subdivision process and allowing that part of the process to be a staff review and approval.

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 12, 2011
PAGE 5 of 7

- He commented that a complete traffic study should not be necessary at the concept plan stage as stated in Sections 24.106.B.5.e and 24.106.F and also in Sections 24.116.B.6 and 24.116.F.
 - Mr. Rivard clarified that only identifying the necessity of a traffic study occurs at the concept plan stage
- Mr. Gerhardt discussed stating that the public hearing/public workshop would be held within the 45 day review period in Sections 24.106.J and 24.116.J.
- He stated that “Where applicable” should be added to the beginning of the first sentence in Section 29.109.B.6 Transportation Impact Study.
- Regarding Section 24.109.D.2, Mr. Gerhardt commented that any staff suggested modifications to layouts should be presented at the concept plan stage prior to completing design of the project
- Mr. Gerhardt stated that Sections 24.110 and 24.111 regarding preliminary plats should be handled at a staff level.
- Regarding Section 24.501.A Improvements Requiring Surety, Mr. Gerhardt stated that he feels that the current regulations make bonding difficult for small businesses. He reported that he would review his ideas with the Jefferson County Engineering Department.

Mr. Burns moved to close the public hearing. Mr. Pellish seconded the motion which carried unanimously.

Mr. Burns moves that staff prepare a report analyzing Mr. Gerhardt’s suggestions to discuss at the next meeting. Mr. P. Taylor seconded the motion which failed 1 for (Mr. Burns) and 7 against.

Mr. G. Taylor moved to amend 24.106.F and 24.116.F to “*The review shall indicate whether a traffic impact study will be required based on analysis required in 24.106.B.5.e*”. Mr. Smith seconded the motion which carried 7 for and 1 against (Mr. Burns).

Mr. Pellish moved to replace the first sentence of both Sections 24.106.J and 24.116.J with, “*At the time of submission, the concept plan shall be placed on the 1st regularly scheduled Planning Commission meeting after the 45 day review period for the public workshop.*” Mr. Baty seconded the motion which carried unanimously.

Mr. Smith moved to amend 24.109.B.6 Transportation Impact Study to read, “*Where applicable, analysis, commentary, drawings, or other material specifically addressing conditions in the concept direction.*” Mr. Pellish seconded the motion which carried unanimously.

Mr. Burns moved to amend 24.109.D.2 second sentence to read, “*In reviewing the submitted application, the Department shall determine whether ~~modifications in the layout would improve the plan~~ the concept plan direction was fulfilled.*” Mr. Smith seconded the motion which carried unanimously.

Mr. Hayes directed staff to meet with Mr. Gerhardt regarding potential surety amendments. Mr. Smith moved to approve the amendments with the above approved revisions. Mr. Burns seconded the motion which carried unanimously.

Mr. Hayes called for a break at 9:10 PM. Ms. Etters left the meeting at 9:12 PM. The meeting resumed at 9:15 PM.

7. Public Hearing for Proposed Zoning Text Amendment to Article 12 of the Jefferson County Zoning and Land Development Ordinance regarding the process of amending the zoning map and/or text.

Ms. Brockman reviewed the amendments.

Mr. Hayes opened the public hearing. Mr. Jason Gerhardt, of William H. Gordon Associates, distributed written comments regarding the amendments. He suggested revising:

- In Section 12.1.b, removing the portion of the suggested amendment that reads, “as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process.” He stated that staff is always free to suggest alternative processes for the applicant and that this part of the amendment would be unnecessary.
- In Section 12.2.c.1.ii, Mr. Gerhardt stated he believed that the sentence should begin “The subject property” and not “Any property.”
- In Section 12.4.a, in the third paragraph, Mr. Gerhardt commented that the last sentence of “The Planning Commission would likely hold a hearing regarding the request as well in order to make an informed recommendation to the County Commission” did not give clear direction as to whether the hearing was required or not and should be amended.

Mr. Baty moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Baty moved to accept the amendments to Article 12 as written by staff. Mr. Baty withdrew his motion to allow for revisions to the amendments.

Discussion ensued regarding the need for the Article 12 amendments.

Mr. Baty moved to accept the amendments with the following revisions:

- a) In Section 12.1.b, remove the “as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process”;
- b) In Section 12.2.c.1.ii, to change “Any property” to “*The properties which are the subject of the proposed zoning map amendment*”;
- c) In Section 12.4.a, paragraph 3, to remove the last sentence, “~~The Planning Commission would likely hold a hearing regarding the request as well in order to make an informed recommendation to the County Commission~~”.

Mr. Burns seconded the motion which carried 6 for and 1 against (Mr. Pellish)

8. Discussion of Planning Commission Bylaws.

Mr. Hayes discussed his recommendations for amending the Planning Commission bylaws regarding number of meetings per month, attendance, and training of commissioners.

Discussion ensued on appropriate measures for determining excessive absences and penalties.

Mr. Pellish suggested that the topic of allowing Planning Commissioners to vote via phone should be addressed. Mr. Hayes requested that an amendment to allow phone voting be prepared to discuss.

Mr. Hayes postponed further discussion until the July 26 Planning Commission meeting and directed staff to consolidate comments within proposed amendments to the bylaws.

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

Mr. Groh gave a brief update regarding the Alstadt's Corner case. He stated that discussion of Far Away Farms litigation would require an executive session to be held at the end of the meeting.

10. Director's Report.

Ms. Brockman presented an invitation from the American Public University to a Sustainability Summit.

Ms. Brockman stated that a public hearing would need to be held regarding the Draft Urban Tree Canopy Plan. Mr. Hayes scheduled the public hearing for the July 26 Planning Commission meeting.

11. County Commission Liaison Report. None.

12. Planning Commission Exchange. None.

13. President's Report.

Mr. Hayes commented on the importance of reviewing the packets thoroughly in the interest of time saved during the meetings.

14. Actionable Correspondence. None.

15. Non-Actionable Correspondence. None.

Mr. Smith moved to enter Executive Session to discuss pending litigation. Mr. Burns seconded the motion which carried unanimously. Executive Session began at 10:30 PM. Regular Session resumed at 11:12 PM.

Mr. Hayes directed Mr. Groh to provide follow-up documentation regarding topics discussed in the Executive Session.

Mr. Hayes adjourned the meeting at 11:15 PM. An audio recording and a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.