

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
NOVEMBER 08, 2011

The Jefferson County Planning Commission met on Tuesday, November 08, 2011, with the following Commission members present: Morgan Etters, Arnold Dailey, Vice- President; Gene Taylor, Kelly Baty, Ed Burns, Paul Taylor 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; Stephan Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Daniel Hayes was absent with notification.

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

1. Election of President.

Mr. Dailey explained that Mr. Hayes had resigned from his position as president of the Planning Commission due to unforeseen job duties.

Mr. G. Taylor nominated Ms. Etters for president. Mr. Burns seconded the nomination. There were no other nominations. Ms. Etters was voted into the position of president unanimously.

2. Approval of the minutes for the October 11, 2011 meeting.

Mr. Pellish moved to approve the minutes of the October 11, 2011 Planning Commission Meeting. Mr. Burns seconded the motion which carried 6 for and 1 abstention (Mr. Dailey).

3. Citizens Communication. None.

4. Request for postponement. None.

5. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 9, Parcel: 39.1. This property is currently zoned Residential Growth and Residential/Light Industrial/Commercial zoning is being requested. The property is located on the south side of Route 340 (William L. Wilson Freeway); the east side of Route 27 (Millville Road) and on the north side of Route 27/2 (Allstadt's Hill Road) and is a total of 12.97 acres. James and Barbara Gibson are the owners.

Mr. Rivard reviewed the responsibilities of the Planning Commission and gave an overview of the location of the property.

Mr. Eric Smith entered the room at 7:09 PM.

Mr. James Gibson, owner of the property, gave a brief presentation of his request.

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Mr. Rivard read from his staff report and recommended that the applicant reapply when the Route US 340 Corridor Study is completed. He stated that staff would support a request of a one-time waiver of fees or for the applicant to apply for a Conditional Use Permit.

Mr. David Tabb, Jefferson County Resident, stated that this property had already given much revenue to Jefferson County. He reasoned that all the properties surrounding this property were already zoned the Residential/Light Industrial/Commercial zoning that the applicant had requested.

Mr. Scott Faulkner, resident of Bolivar Heights, stated that US 340 was a primary gateway and that visitors to the County should not see neon signs, large parking lots, or garish buildings when looking west past Bolivar Heights. He asked that the Planning Commission look at the Comprehensive Plan and find a public reason that this property should have a zoning change. He reported concern that there were no design standards. He was also concerned that jobs would not be created, but lost since the Flea Market and the Wilt Fruit Stand would be shut down. He requested that a condition be that the Wilt Fruit Stand not be disrupted. He commented that 20% of the commercially zoned properties in the County are empty which he interprets to mean that more commercially zoned property is unnecessary.

Ms. Lyn Widmyer, County Commissioner speaking as an area resident, commented that the US 340 Corridor Study would be analyzing the uses and character of this area and believes this property should be a part of the comprehensive vision that will be developed. She requested that the applicant wait for the US 340 Study to be completed before requesting a rezoning. She also commented that she was opposed to this request as traffic studies in this area have shown that further degradation and congestion are forecasted. She commented that this area needs to stay as free flowing as possible.

Andrew Lee, National Park Service Park Manager, read a letter penned by Superintendent Rebecca Harriett which addressed the historical nature of the property and cited several historic events (letter attached). The letter stated that the Residential/Light Industrial/Commercial category is too broad and poorly construed and would have a significant adverse impact on historic values.

Dick Latterell, Resident of Moler's Crossroads, stated that this type of modest commercial development would not be of benefit to the County's economy. He stated that the existing facilities hold more jobs for citizens than would any new commercial development. He agreed that he would oppose anything that would negatively affect our National Park.

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

Mr. Gibson distributed a document of supplemental information including a draft motion recommending approval. Mr. Gibson quoted the Comprehensive Plan, "It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth area". He stated that his property falls directly within the designated growth area on the reference map that is the closest thing that the Comprehensive Plan has regarding future land

use and should be considered consistent with the Comprehensive Plan. Mr. Gibson commented that the property is surrounded on three sides by properties zoned Residential/Light Industrial/Commercial. He stated that studies to enlarge the Park Boundary did not include his property. Mr. Gibson explained that the property is already zoned Residential Growth and already has a high intensity commercial use on the property and that the requested Residential/Light Industrial/Commercial zoning would have very little impact on traffic as the property is already being used commercially.

Mr. P. Taylor asked Mr. Gibson if he would be willing to wait to request a rezoning until after the US 340 Study was complete. Mr. Gibson declined explaining that he believed it would be quite some time before the study would be incorporated into the new Comprehensive Plan and that he would like to financially plan for his future at the present time.

Mr. Pellish inquired as to what would happen to the Flea Market. Mr. Gibson commented that the Flea Market was intended to be an interim use only. If he were to get an approval on a rezoning, he stated he would like to look at his options and plan for even better uses for the property.

Mr. Pellish moved to recommend to the County Commission that the rezoning request is consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which resulted in a vote of 4 for (Mr. G. Taylor, Mr. Dailey, Mr. Pellish and Mr. P. Taylor) and 4 opposed (Mr. Smith, Mr. Burns, Mr. Baty and Ms. Etters).

Mr. Burns moved that the rezoning request be forwarded to the County Commission without a recommendation due to a deadlock. Mr. Smith seconded the motion which carried 7 for and 1 opposed (Mr. Baty).

Ms. Etters called a 5 minute recess at 8:41 PM. Ms. Etters called the meeting back to order at 8:47 PM.

- 6. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Shepherdstown, Map: 13, Parcels: 26.1, 26.2, 26.3 & 26.4. These properties are located on Kearneysville Pike approximately 0.5 miles west of its intersection with Morgan Grove Road and are a total of 13.69 acres. Twin Oaks Subdivision, LLC is the owner.**

Mr. Rivard reviewed the responsibilities of the Planning Commission and gave an overview of the location of the property.

Mr. Fred Blackmer, the applicant's representative, discussed the request and the history of the property. He stated that the reason for requesting the Industrial/Commercial zoning was to exclude the possibility of residential use. He commented that the property would only be able to have a commercial use since the setbacks would not allow heavy or light industrial or adult uses.

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Mr. Peter Corum, applicant, clarified that the commercial use would support agriculture and agricultural sales.

Mr. Rivard read from his staff report and stated that while staff is in support of the agricultural business use, the staff would not support a request for Industrial/Commercial zoning since that zoning designation for that property would not be in conformance with the 2004 Comprehensive Plan. He explained that the Conditional Use Permit (CUP) process would be more appropriate for this request.

Ms. Ethers opened the public hearing.

Dr. Sylvia Shurbutt, area resident, stated that Morgan Grove Park is surrounded by a quiet residential community and that the requested zoning of Industrial/Commercial would be inappropriate. She also stated that she does not approve of the current commercial use on the property and feels that the creation of the commercial activity may have been to preface the request to Industrial/Commercial.

Mr. Mike Austin, President of the Shepherdstown Men's Club, briefly described the legal history of the property as he knew it. He stated that it has had an adverse impact on the community and on the Men's Club due to its controversial nature. He stated that he is concerned since allowing this type of zoning does not allow the public to react toward or influence specific development in the future which he feels is inappropriate. He commented that the applicant's claim that this property has had a continuing commercial use is a misstatement and wondered if other misstatements were made regarding the rezoning request. He stated that many people he had spoken to said that the proposed use could be accomplished better with a Conditional Use Permit. Mr. Austin also submitted a written letter to the Planning and Zoning Department which reiterated his concerns.

John Amos, area resident, Vice-President of the Shepherdstown Men's Club, discussed his frequent use of Morgan Grove Park and urged the Planning Commission to deny the request. He also stated that the proposed use could be accomplished with a Conditional Use Permit. He expressed concern that rezoning the property would lead to undesirable development in the future. He asked that consideration be given to the existing residents and the affect that rezoning would have on property values and rights. He commented that there were misleading inaccuracies in the document presented to the County Commission by Mr. Corum including that the property had been in continual commercial use since 1968. He stated that he had moved here 18 years ago and no commercial use existed on that property until the Farmers Market opened just this past summer. He indicated that Mr. Corum reported that the recent mixed use proposal that had been presented for that site received community support. Mr. Amos stated that was inaccurate and that those plans were actively opposed.

Judy Moore, resident of Ledge Lowe Estates, stated that she was concerned about traffic safety in the area. She reported that Mr. Corum did place traffic cones last summer to help slow traffic. She stated that it was still a very dangerous section of the road. She commented that neighbors also have rights as well to the peaceful enjoyment of their property.

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Diana Suttentfield, area resident, stated that there are no commercial properties on the south side of Route 480 and that Route 45 is where commercial development should be encouraged. She stated that allowing this rezoning would adversely affect the residents and any efforts to sell properties in that area. She asked the Planning Commission to maintain the rural character of the area. She stated that there are historic reasons (Town Run) that this property should not be rezoned.

Susan Kennison, Bizmarket Founder, supports the project and stated that the community needs this kind of local, sustainable economy. She then read several letters of support from area residents. Time did not allow for all letters to be read. Ms. Kennison provided copies of the letters to the Planning and Zoning staff.

Ann Spurgas, area resident, stated that she feels that instead of being a benefit to the community, the proposed project and rezoning would most likely be a detriment to area property values and change the dynamics of the neighborhood. She said that just the Farmers Market business added considerable traffic and noise to the area. She stated that there are many other areas already currently zoned with the requested zoning that are more appropriate in location. She also reported that the property had not been in consistent commercial use. She commented that Morgan Grove Park is a nice park due to the quiet rural nature of the area. She raised concern that a rezoning to Industrial/Commercial would allow for unwanted future development.

Harvey Heiser, Zoning Officer of Shepherdstown, reported that the Shepherdstown Planning Commission was unaware of this request before their most recent meeting and had not had a chance to discuss or compile a recommendation regarding this request. He asked that the Planning Commission consider the staff report and the public comment before making a decision.

Susan Flittie, area resident, spoke against the request due to the commercial development of the proposal. She also commented on the hazardous traffic in the area. She stated that she would not mind for the development to be residential in nature.

Joe Spurgas, area resident, stated that the proximity of this property to Morgan Grove Park should be a determination in recommending denial of this request. He commented that the park would be unable to survive with any kind of commercial activity adjacent to it. He proposed that Mr. Corum join with a coalition of people to find Parks and Recreation funds to purchase the property and expand the park. He encouraged that the Farmers Market exist within that park.

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

Mr. Corum discussed the previous proposal for the property which included 34 townhomes and 30,000 square feet of commercial area. He explained that after extensive conversations with area residents, he understood that the residential portion of the proposal was undesirable. He stated that Industrial/Commercial zoning was being requested due to the fact

that it restricts residential. He stated that he would be unable to satisfy all the residents as the “finish line” seems to keep moving. He commented that the speed limit in that area had been lowered due to his and Mr. Blackmer’s efforts. He stated that a market within walking distance of a residential community defines sustainable economy.

Mr. Blackmer reiterated that to eliminate the possibility of residential development, an Industrial/Commercial category was the best option to request. He also discussed that any industrial or adult uses would not be possible on the site since variances would be needed that would be extremely unlikely for the Board of Zoning Appeals to grant. He commented that the staff should have outlined that, due to setbacks, industrial and adult uses would be impossible for this property. Mr. Blackmer discussed reasons why the applicant did not choose to apply for a Conditional Use Permit and stated that the CUP process was really just spot zoning. Mr. Blackmer stated that the applicant had chosen the most restricted and heavily regulated zoning to request.

Mr. Baty moved to recommend denial to the County Commission because the request is not consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which failed 2 for (Mr. Baty and Ms. Etters) and 6 against.

Mr. Baty moved to recommend approval to the County Commission because the request is consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which carried 5 for and 3 opposed (Mr. Smith, Mr. Baty and Ms. Etters).

Ms. Etters called a 5 minute recess at 10:45 PM. Ms. Etters called the meeting back to order at 10:49 PM.

7. Final Plat Public Hearing for a resubdivision of Lot #16 and the Homeowners Association Parcel of the Cedar Meadows Airpark (PC File #11-07) The property is located on Hardesty Road near the VA/WV border, close to the intersection with Jamestown Road and is designated as Tax District: Middleway, Map: 29, Parcel: 1.

Mr. Barney described the location of the property and explained to the Planning Commission that staff had been made aware of a dispute of land ownership.

Mr. Groh provided legal guidance on proceeding to hear the request without determination of ownership.

Mr. Jim Crawford, applicant’s representative, gave a brief presentation on the history of the project and stated that the purpose of the resubdivision was to more clearly define the common areas within the plat and within the Homeowner’s Association Covenants.

Mr. Jason Gerhardt, Engineer with William H. Gordon Associates, clarified the need for the resubdivision.

Mr. Barney presented his staff report and recommended approval with the conditions that the applicant shall address all remaining, unresolved staff comments, the applicant shall provide

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to the Planning and Zoning Department and to the Cedar Meadows Airpark homeowner's association (HOA) a schedule for the transfer to the association of the parcels containing the hangar and runway, the stormwater management facilities, and the road right-of-way, and that the applicant is the legal owner.

Ms. Ethers opened the public hearing.

Mr. Timothy Foltz, who proclaimed to be the owner and lives on lot #16, explained the history of the original subdivision and why he believed he was the true owner of the property. He presented an operations agreement dated December 5, 2002 that he believed proved that he was the rightful owner. He requested that the Planning Commission postpone their decision until ownership could be determined through a legal process.

Mr. Robert Blackford, Cedar Meadows Airpark Lot #13 owner, commented that he is opposed to the request since he did not believe that the applicant was the true owner and that he did not want to see an additional residential possibility.

Mr. Andrew Catsakis, Cedar Meadows Airpark Lot #3 owner, stated that he opposed the request due to the residential possibility. He also commented that ownership should be resolved before approving this request.

Mr. Robert Goldsboro, Cedar Meadows Airpark Lot #1 owner, also voiced opposition to the request.

Mr. James Greer, President of the Cedar Meadows Airpark HOA, supported the resubdivision and stated that the applicant was only trying to recuperate some of the money that was put into the subdivision. He explained that the purpose of the resubdivision was to ensure the runway was a part of the common area and that no residence could be placed on the property due to the proximity of a house to the runway.

Mr. Goldsboro stated that planes fly over his house every day and that stating a house could not be built there is untrue.

Mr. Foltz again disputed ownership and reiterated his request to postpone the decision.

Mr. G. Taylor moved to close the public hearing. Mr. Dailey seconded the motion. Mr. G. Taylor withdrew the motion.

Ms. Christine Kessner, Cedar Meadows Airpark, stated that the ongoing ownership dispute had been holding residents "hostage" for many years. She stated that she would like to sell her home and she feels she had been unable to correctly market the usability of the airpark.

Mr. G. Taylor again moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Ms. Brockman explained the application process and stated that the applicant's signature was usually obtained after the 1st review comments were returned. She mentioned that due to this issue, departmental policy would now be that the applicant's original signature would be necessary upon submission of any project. She clarified that all public notices mentioned Timothy Foltz as the owner since that was the information on the first review of the plat provided by the engineer. She stated that a week prior to the meeting, staff had been notified that the ownership had changed.

Mr. Groh again stated that the Planning Commission should not debate ownership and should proceed with the owner as stated by the most current deed.

Discussion ensued regarding making a determination without knowing the current owner. Mr. Groh advised again that the Planning Commission should not form their decision of the request based on the ownership of the property.

Mr. P. Taylor moved to disapprove the resubdivision application. Mr. Pellish seconded the motion. Mr. Pellish moved to amend the motion to disapprove due to incomplete information. Mr. G. Taylor seconded the motion to amend which carried unanimously.

8. **Final Plat Public Hearing for a major plat change for Spruce Hill (PC File #02-08) to amend the 50' landscape buffer to accommodate a garage on Parcel #88. This property is located on Huyett Road approximately 0.5 miles west of its intersection with US Route 340 at 411 Blue Spruce Drive in Charles Town, W.V., 25414 and is designated as Tax District: Kabletown, Map: 3C, Parcel: 88. William and Lori Davis are the owners.**

Mr. Barney gave an overview of the minor plat change and explained the request.

There were no applicants or applicant representatives in attendance to present the project.

Ms. Etters opened the public hearing. There were no comments. Mr. G. Taylor moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Smith moved to approve the minor plat change with the staff recommended motion. Mr. Burns seconded the motion which carried unanimously.

9. **Site Plan Public Hearing for Jefferson Asphalt Products (PC File #S11-12). This project consists of a 60 ft. by 70 ft. single story office building and a 60 ft. by 100 ft. maintenance shop. The property is located at 9390 Middleway Pike on WV Route 51 near Tuscowilla Hills and is designated as Tax District: Charles Town; Tax Map: 13 Tax Parcel: 7.**

Mr. Rivard provided an overview of the application.

Mr. Dirk Stansbury, Engineer for the project, gave a brief presentation.

Ms. Eters opened the public hearing. There were no comments. Mr. Burns moved to close the public hearing. Mr. Baty seconded the motion which carried unanimously.

Mr. Burns moved to approve the site plan. Mr. Dailey seconded the motion which carried unanimously.

10. Request by Robert Henshaw (WilBob Farm Inc.) for a waiver from the Subdivision Regulations Section 20.201 to allow for a second access to the property. This property is located on Route 51 approximately 0.3 miles west of the intersection of Middleway Pike and North Childs Road and is designated as Tax District: Middleway, Map: 19, Parcel: 39.

Mr. Rivard reviewed the waiver request and recommended approval.

Mr. Robert Henshaw, applicant, stated he had nothing further to add to the presentation.

Mr. Smith moved to approve the waiver request. Mr. Pellish seconded the motion. Ms. Eters moved to amend the motion to state that an updated Department of Highways permit was necessary. Mr. Smith and Mr. Pellish accepted the amendment. The motion passed unanimously.

11. Reports from Legal Counsel and legal advice to PC. None.

12. Director's Report.

Ms. Brockman discussed the December 13, 2011 Planning Commission and stated that there would be no time sensitive or public items on that agenda.

Ms. Eters cancelled the December 13, 2011 Planning Commission Meeting contingent upon no public items being submitted to the Planning Department.

13. County Commission Liaison Report. None.

14. 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.** None.

15. President's Report. None.

16. Actionable Correspondence. None.

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17. Non-Actionable Correspondence. None.

Mr. G. Taylor moved to adjourn the meeting at 12:01 AM. Mr. Burns 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.