

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
AUGUST 10, 2010

The Jefferson County Planning Commission met on Tuesday, August 10, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Morgan Eppers, Secretary; Frances Morgan, Daniel Hayes, Arnold Dailey, Kelly Baty, and Gene Taylor. 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; Julie Quodala, Planning and Zoning Office Manager; and Amy Puetz, Planning Clerk.

Stephen Alemar was absent with notification.

Mr. Maxey called the meeting to order at 7:02 PM.

1. Approval of minutes for the July 27, 2010 Planning Commission Meeting:

Mr. Trumble moved to approve the minutes of the July 27, 2010 meeting. Mr. Baty seconded the motion which carried 7 for and 1 abstention (Mr. Dailey).

The previously approved minutes of the July 30, 2010 meeting were provided to the Planning Commission in the agenda packets.

Ms. Morgan asked if the minutes from the August 5, 2010 special meeting and the August 6, 2010 Planning Commission workshop were ready to be reviewed by the Planning Commission. Staff asked for a postponement of those minutes until the August 24, 2010 meeting.

2. Citizens Communication: None.

3. A call for postponements: None.

4. Presentation by Jennifer Syron on Limited Expense Communities and Homeowner Association (HOA) Covenants.

Ms. Jennifer Syron, a Chapel View Resident, provided a definition of a "Limited Expense Community", explained West Virginia State Law and what parts of WV State Law Chapter 36B a limited expense community is exempt from, ramifications to home owners, and how being a limited expense community had created several issues for Chapel View. Ms. Syron requested that the Jefferson County Planning Commission take a deeper look at HOA Covenants before approving a final plat. She asked that Jefferson County become more restrictive regarding HOAs by requiring submissions of annual financial reports and updates of board information.

There was discussion on how the Planning Commission could assist in preventing future issues for subdivisions such as the issues currently facing Chapel View. Mr. Groh counseled the Planning Commission that they may not be able to deny a project based on the HOA

Covenants. Mr. Maxey asked that Mr. Groh research for more detail whether the Planning Commission has authority to approve or deny a project based on covenants or if a request of a legislative amendment is necessary. Ms. Morgan asked that a file including all documentation and recordings on this topic be kept by staff for future references.

5. Report from Engineering related to testing data in Chapel View Subdivision.

Mr. Saunders informed the Planning Commission that Engineering had received the data from ECS, the Geotechnical Firm who performed the testing, and that Engineering would be reviewing that data over the next few days. Mr. Maxey suggested having Planning Commissioners with engineering experience also review the documents. Mr. Hayes and Ms. Eppers agreed to review the reports and requested that the information be sent to them electronically. Mr. Maxey requested that this item be placed on the August 24, 2010 agenda.

6. Follow-up and possible vote on potential action related to the Freedom of Information Act request and the brownfield status of Old Standard Quarry.

Mr. Groh presented a follow-up letter addressed to Mr. Jon Amores, Deputy Secretary of Commerce and General Counsel for the West Virginia Department of Commerce, regarding the FOIA request of the Old Standard Quarry file requesting a second review and releasing any information the Planning Commission may not have received with the first request. Mr. Maxey voiced concern that the letter was not specific enough to what the Planning Commission was requesting such as who drafted the request, were they paid to draft it and by whom, why was it drafted, and receiving a signed application.

Mr. Maxey reminded Mr. Groh of the FOIA request to the state government body responsible for developing legislative rules requesting all e-mails, voice recordings, and any media or documentation related to the development of legislative rules. Mr. Groh explained that he did not have the opportunity to create that request. Discussion ensued regarding the burden of work on the Prosecuting Attorney's Office and the Planning Commission's need for available legal counsel and what alternatives were available.

Mr. Trumble moved that Mr. Groh draft a letter and Mr. Maxey review it and upon his approval, sign and send out that letter. Mr. Baty seconded the motion which carried unanimously.

Mr. Paul Rosa, citizen of Charles Town, commented that his opinion was to get representing legal counsel in Charleston because the Freedom of Information Act states that a suit must be filed in the county where the records are held.

Mr. Maxey called for a break to allow staff to change the CD at 8:23 PM. Ms. Morgan left the meeting at 8:27 PM. Mr. Maxey called the meeting to order at 8:28 PM.

Mr. Rosa continued stating that a complaint needs to be filed as soon as possible.

Mr. Maxey presented a letter address to Mr. Jim Maurin, the Department of Environmental Protection Project Manager for review of the Planning Commission. Mr. Trumble suggested striking "...protecting the environment and..." from the first sentence on second page, second paragraph so that the sentence reads "The Planning Commission would greatly appreciate your assistance in creating a clear and agreeable standard that the State, County and Old Standard, LLC can use as a benchmark to meet the site requirements." Mr. Hayes moved to approve the letter with Mr. Trumble's suggested amendment. Mr. Maxey seconded the motion which carried unanimously.

7. Follow-up to August 6, 2010 work session regarding Draft Cell Tower Regulations.

Mr. Barney gave an update on the August 6, 2010 work session along with a review of the Draft Cell Tower Ordinance and staff recommendations and work schedule for the ordinance. Ms. Brockman stated that comments had already been received from members of the cell service industry which staff will collect and present after the stakeholder's meeting. Mr. Hayes asked that the cities of Charles Town, Ranson, and Shepherdstown be informed of the document and obtain their thoughts on potential overlay districts for those areas. Mr. Maxey directed staff to write a letter of invitation to the stakeholder's meeting for review at the August 24, 2010 Planning Commission meeting.

Mr. Maxey explained that Mr. Groh had reviewed the Draft Cell Tower Ordinance and had noted that the County does not have statutory authority to require liability coverage, bonding for fees for a consultant to be retained by the department, execution of a maintenance/removal agreement, or the demolition of an abandoned (inactive) tower. As a result, staff recommended removal of this section from the draft. Mr. Maxey directed Mr. Groh to provide in writing the specific section of State Code that prevents the Planning Commission from including those requirements in the ordinance and how it might be modified in a legislative session to solve the problem and to present that at the August 24, 2010 Planning Commission meeting.

Mr. Maxey asked the Planning Commission to give guidance to staff regarding each of the recommendations:

- a) There was unanimous consent to remove items that Mr. Groh advised that the County does not have statutory authority for with the understanding that Mr. Groh would be providing a report regarding the specific statutory citation at the August 24, 2010.
- b) There was unanimous consent to include prioritized location such as water towers, utility poles, steeples, and areas screened by existing vegetation. Mr. Trumble suggested adding the term structures so that it would read "Prioritized Locations and Structures".
- c) There was unanimous consent to include landscaping standards.
- d) There was unanimous consent to identify setbacks for equipment.
- e) There was unanimous consent to include a fall zone of 110% of the tower's height.
- f) There was unanimous consent to include a maximum sign dimension.
- g) Mr. Maxey proposed to expand the location in which 199 foot towers can be placed by right to include land owned by Jefferson County, the Jefferson County Fire and

Rescue Association training grounds, and the Jefferson County Economic Development Authority. Mr. Dailey raised concern that the taller towers with greater fall zones are being placed in a more populated area and tying up industrial property than in the rural area where there is less risk to personal or property damage. Mr. Maxey voiced disagreement stating that 90% of the county is rural and increasing tower height to 199 feet in the rural district would be no different than the regulations currently in effect. Mr. Maxey moved to direct Mr. Barney to modify the tower heights section to include land owned by Jefferson County, the Jefferson County Development Authority, and the Jefferson County Fire and Rescue Association training grounds to locations in addition to those zoned industrial and to also present a map of those locations designating a 3 mile radius around each to be able to visualize coverage areas at the August 24, 2010 meeting. Mr. Hayes seconded the motion. Mr. Trumble offered a friendly amendment to leave the language as written and to just have the map presented at the August 24, 2010 meeting. Mr. Maxey accepted the friendly amendment. The motion passed 5 for, 1 against (Mr. Dailey), and 1 abstention (Mr. Taylor).

- h) There was unanimous consent to include a demonstration of need in the form of a propagation map.
- i) There was unanimous consent to include a regulation preventing speculative towers and requiring an affidavit from a wireless service provider that it will operate or collocate on the tower.
- j) There was discussion on proliferation. Staff recommended a requirement to have applicants send certified letters to all wireless providers, to seek a lease agreement for placement of antennas on an existing structure. Mr. Rosa stated that the issue of proliferation had already been addressed in Section 4B.10.3. There was unanimous consent to have Mr. Barney review that section and if more language is necessary, staff can recommend that with the next draft.
- k) Ms. Brockman requested that the Planning Commission give consent to schedule a stakeholder's meeting. Mr. Maxey moved to direct staff to schedule a stakeholder's meeting either August 31, 2010 or the first week of September and to advertise it. Mr. Taylor seconded the motion which carried unanimously.

Mr. Rosa distributed his recommended edit to Section 4B.10.10(2)(B) which read, "Wireless Telecommunication Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts ~~may~~ shall not exceed 100 feet *provided, however, that towers on lands owned by Jefferson County, the Jefferson County Fire & Rescue Association or the Jefferson County Development Authority in any zoning district shall not exceed 199 feet*". He suggested allowing towers using structures, such as silos, additional height in the rural district not to exceed 120 feet. Mr. Rosa commented that a larger quantity of shorter, well-disguised towers was more aesthetically desirable to the community than a lesser quantity of taller towers. Ms. Brockman left the meeting at 9:30 PM.

8. **Blue Ridge Mountain Community Plan.**

Mr. Rivard reported that there would be a Citizen's Committee meeting on August 14, 2010 at 2 PM and another meeting September 21, 2010 at 7 PM.

9. Reports from Legal Counsel and legal advice to the Planning Commission.

Legal counsel was not present.

10. Planning Commission Training.

Mr. Rivard provided the Planning Commission with Section 24.105, 24.106, 24.107 and 24.108 of the Subdivision Regulations detailing the processing of a Concept Plan. Mr. Rivard explained the steps from application to the Public Workshop of a Concept Plan.

Mr. Maxey called for a break to allow staff to change the CD at 9:46 PM. Mr. Maxey called the meeting to order at 9:48 PM.

11. Director's Report.

- a) Activity Report. An Activity report of the staffs' schedule for the two weeks prior to the meeting was provided to the Commissioner's in the agenda packets.
- b) Update on Subdivision Regulation Amendment Public Hearings. Mr. Rivard provided an update on two public hearings held August 4, 2010 and August 9, 2010. He noted that public comment would be accepted until 5 PM on August 11, 2010.
- c) Urban Tree Canopy- Division of Forestry Grant opportunity. Mr. Rivard reported that Mr. Frank Rogers of the Cacapon Institute has offered to write the grant and that it would be a collective effort between Charles Town, Ranson, and Jefferson County.
- d) Update on the US 340 planning effort. Mr. Rivard explained that there had been several meetings related to this effort and that Ms. Brockman, County Commissioner Lynn Widmyer, and Mr. Rivard took part in a conference call with Place Makers, which is a Smart Code organization that had completed work for Ranson.
- e) Report on Zoning Map work and Federal Lands. Mr. Rivard informed the Planning Commission of the progress of the Zoning Map update. He explained that staff has located a map that states any undesignated parcel is zoned rural and how that affected park land. Mr. Maxey stated he would have interest in taking a proposal to County Commission to have any underlying zone with regards to Federal Land down-zoned to rural. Mr. Maxey moved to direct staff to provide to the Planning Commission at the August 24, 2010 meeting a map of the parcels, an accurate legal description of the parcels, and a recommendation for a zoning map change so that the Planning Commission could decide if a public hearing should be scheduled. Mr. Trumble seconded the motion which carried unanimously.

12. County Commission Liaison Report: None.

13. Planning Commission Exchange: None.

14. President's Report: None.

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15. **Actionable Correspondence:** None.

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

Mr. Trumble moved to adjourn at 10:01 PM. Mr. Taylor seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CDs #__ , #__ and #__ . These minutes were prepared by Amy Puetz, Planning Clerk.