

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
DECEMBER 14, 2010

The Jefferson County Planning Commission met on Tuesday, December 14, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Eric Smith, Daniel Hayes, 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; and Julie Quodala, Planning and Zoning Office Manager.

Morgan Eppers and Arnold Dailey was absent with notification.

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

**1. Approval of the minutes from the November 9, 2010 Planning Commission Meeting.**

Mr. Trumble suggested amending page 1 to list Mr. Eric Smith as present. Mr. Maxey suggested the following changes:

- On page 1, section 4, paragraph 2, to change the word "started" to "completed".
- On page 2, line 7, to add the word "them" after "voting on".
- On page 2, last paragraph, line 2, to insert the word "to" between "attempt" and "prevent".
- On page 4, second paragraph, line 4, to insert the word "Counsel" after "Legal" and the word "the" before "County Commission".

Mr. Hayes moved to approve the minutes with the suggested changes. Mr. Trumble seconded the motion which carried unanimously.

**2. Citizens Communication:**

Ms. Jennifer Syron, resident of Chapel Hill, stated that Berkeley County Engineers were able to examine the roads in Chapel Hill. She relayed that she was informed by the Engineer that the sub grade measured 4 inches, that there was no distinction between the top coat and the base coat, and that construction was not built to specs. Ms. Syron expressed appreciation to the Jefferson County Engineering Department for getting the letter of credit pulled and stated that whatever project is to be done with that bond money to repair the roads should be done completely and correctly. She also conveyed gratitude to the Planning Commission and the Planning Department for their time and commitment.

Mr. Paul Rosa, resident of Charles Town, discussed the policy on land use change requests within a defined Planning Study area, a topic that was withdrawn from the agenda. He commented that, at the November 9, 2010 Planning Commission meeting, Ms. Lyn Widmyer suggested that rezoning petitions along US 340 wait until completion of the 340 Corridor Study. Mr. Rosa stated that he felt this action would take away citizens' property rights and a policy to this effect would be imposing a moratorium.

**3. A call for postponements: None.**

4. **Tabled from the October 12, 2010 meeting: Request by Barbara Feldman and Barry Whitebook for a waiver from Section 20.203 (D)(2) to waive the requirement for stormwater management, from Appendix A 1.3(A)(15) to waive the need for a topographic study, and from Appendix B 9.4(E)(3) to waive the required width for the access road.**

Mr. Rivard read from his staff report and recommended granting the waiver from the required access width. He reviewed the variance request, and outcome of those variances, that were heard by the Board of Zoning Appeals. Mr. Saunders read from his staff report and raised concern that lack of stormwater management may have an impact on neighboring properties although a slight risk. He also stated that the decrease in the pavement width would not be adequate. He discussed the information provided by the Addressing Department regarding two foot contours. Mr. Saunders expressed concern that the topographical maps may not be accurate without a current survey. However, he stated that the County Engineer was willing to consider utilizing the GIS 2' contours on a trial basis.

Ms. Barbara Feldman, owner, described her business as a healing martial arts center that teaches taichi, qi gong, and karate. She stated that the stormwater runoff would go toward a forsythia bush or a line of trees along the front of the property and that the building would see very little runoff. She explained the reasons that she believed she did not need to have a site plan referencing Article 20.203 of the Subdivision Ordinance.

Mr. Maxey opened the public hearing. Ms. Lynn Welsh, Architect, attested that the ground is flat and that the building is elevated and water flows freely under it. She feels that a site plan would be an unreasonable request.

Ms. Stephanie Simpson, student of Ms. Feldman, agreed that she didn't feel stormwater management would be an issue.

Mr. Eric Smith enters the room at 7:45 PM.

Ms. Feldman explained that classes would be separated by 20 minutes to help control traffic. Mr. Maxey closed the public hearing. Discussion ensued regarding the need or lack of need for a site plan.

Mr. Hayes moved to approve the waiver on the road width (to allow the current 10 foot width instead of the required 20 foot access width). Mr. Maxey seconded the motion. Ms. Morgan asked that reasons for granting the waiver be entered into the record. Mr. Maxey stated that his reasoning would be that a width of the current 10 foot wide access would allow for better stormwater management than the required 20 foot access. Mr. Baty raised concern that granting the variance may be acceptable currently but worried that complaints may be made in the future by neighbors. The motion carried 5 for and 2 opposed (Mr. Trumble and Mr. Baty).

Mr. Hayes moved to approve the waiver of the stormwater management requirement because they have, through whatever faults, basically provided within the spirit of the stormwater management rules. Mr. Maxey seconded the motion which carried 6 for and 1 opposed (Mr. Baty).

Mr. Hayes moved to grant the waiver for the field run topographic survey because the County-provided topographic data will be sufficient for the site plan under the assumption that the applicant is responsible for any discrepancies in that topographic survey. He included that this waiver is only valid because the Planning Commission had chosen to waive the stormwater management requirements. Ms. Morgan seconded the motion on the understanding that this waiver and the use of the County data is a peculiar set of circumstances and that there is no intention to set a precedent. Mr. Maxey stated that a staff developed policy that establishes parameters of using GIS data should be written. The motion carried 5 for and 2 opposed (Mr. Baty and Mr. Trumble).

**5. Request by Far Away Farm, LLC for a variance from Section 6.3 of the Subdivision Ordinance to extend the expiration of the Community Impact Statement until March 2, 2015.**

Mr. Rivard read from his staff report which recommended denying the variance for extension to March 2, 2015. However, staff could support and recommend granting the variance for a time extension to July 1, 2012. Mr. Saunders deferred to the County Planner for recommendation.

Mr. Nathan Cochran, Attorney, explained that the request for the extension of time was to allow for the fulfillment of any plat requirements. He asked that any Planning Commission members that were involved in the lawsuit or any of the related proceedings recuse themselves. He specifically named Mr. Maxey, Mr. Taylor, Mr. Trumble, Mr. Baty, Ms. Eppers, and Ms. Morgan. Mr. Cochran asked that, if the Planning Commissioners chose not to recuse themselves, that a stay be put on this agenda item so that a more appropriate tribunal could be addressed.

Mr. Trumble moved to go into Executive Session. Mr. Baty seconded the motion which carried unanimously. Executive Session began at 8:48 PM. Mr. Hayes moved to resume regular session. Mr. Baty seconded the motion which carried unanimously. Executive Session ended at 9:04 PM.

Mr. Maxey, Mr. Trumble, Mr. Baty, Mr. Taylor, and Ms. Morgan all stated that they would not be recusing themselves. Mr. Cochran requested that a stay would be placed on the agenda item so that he could seek a review of the matter from the appropriate court. Ms. Morgan moved to reject the request for a stay or a delay in the proceedings. Mr. Trumble seconded the motion which carried unanimously.

Mr. Cochran reiterated the reason for the variance request and referenced the case of *Jefferson Utilities, Inc. v. Jefferson County Bd. Of Zoning Appeals* as a precedent for granting

a tolling of time. (The staff report reflected that the tolling of time in that case was court ordered.) Mr. Cochran stated that the time extension should not require a variance request and should be granted to Far Away Farms as a matter of right because not granting the extension would be penalizing them for pursuing their legal right to appeal. Mr. Maxey asked that Mr. Cochran address the four criteria for granting a variance according to the Subdivision Regulations. Mr. Cochran reiterated that a time extension should be granted as a matter of right, not as a variance and that the only reason a variance application was submitted was at the request of the Planning Commission. Ms Morgan asked about the last legal deadline related to the most recent lawsuit, to which Mr. Cochran replied that June 2010, was the last chance for appeal. In light of this, there was discussion regarding why the request was delayed to 5 days before the expiration of the Community Impact Statement. There was considerable discussion between the applicant and the Planning Commission as to whether a variance is the correct procedure rather than an extension by right due to extensive legal proceedings. Mr. Cochran then addressed the four criteria for granting a variance stating that:

- 1) The request is not contrary to public interest and that there would be public expense and time if the project had to start again from the beginning and that the development of the property had not been proven to violate any historic issues.
- 2) A literal enforcement of this Ordinance would result in an unnecessary hardship financially for the developer and require additional expense to the County.
- 3) The request is not the result of a self-imposed hardship due to the time in legal proceedings.
- 4) The spirit of the Ordinance will be observed and substantial justice done because Far Away Farms had followed all the requirements presented to them in order to be allowed to proceed with the development.

Mr. Maxey closed the public hearing.

Ms. Morgan moved to deny the request for an extension to the Community Impact Statement. Mr. Trumble seconded the motion. Mr. Maxey voiced his support to deny the request stating that denial did not impact whether the project could be built, rather if it should occur as a time extension of the Community Impact Statement. Mr. Maxey further stated that Mr. Cochran did not prove that this extension was not contrary to the public interest because granting the application would allow stormwater design under 30 year old regulations that might not conform to the current Subdivision Regulations. The motion carried unanimously. Mr. Cochran stated that he felt that the Planning Commission did not address the request to extend the time for all platting process deadlines. Ms. Brockman explained that the denial of the variance to extend the Community Impact Statement incorporated all time requirements.

Mr. Maxey called for a 5 minute break at 9:39 PM. The meeting resumed at 9:44 PM.

**6. Reconsideration of the following motion regarding the Federal Land Rezoning Petition:**

***Quoted from September 14, 2010 Planning Commission Meeting Minutes ~ Mr. Maxey also presented a draft Resolution to Petition the Jefferson County Commission to amend the zoning map. Mr. Maxey moved to approve the resolution as drafted. Mr. Trumble seconded the motion which carried unanimously.***

Ms. Brockman read the Resolution to Petition the Jefferson County Commission to amend the zoning map (attached) which was approved unanimously on September 14, 2010. Mr. Maxey asked if any member would like to reconsider the vote. Mr. Hayes moved to reconsider. Mr. Trumble seconded the motion. There was discussion on whether the County Commission was required to hold a public hearing because a petition was filed even though they found the petition to be insufficient. Mr. Maxey called to question. The motion carried 5 for and 2 opposed (Mr. Maxey and Ms. Morgan). Mr. Taylor moved to discuss. There was no second.

Mr. Trumble moved to table the issue. Mr. Smith seconded the motion. Mr. Trumble withdrew the motion to table and moved to postpone the agenda item to allow for discussion. Mr. Smith seconded the motion.

Mr. Paul Rosa, citizen of Charles Town, urged the Planning Commission to move forward and present the petition to the County Commission and request a public hearing. He cited reasons that he believed that the petition, which was previously submitted to the County Commission, was sufficient. Mr. Rosa requested that documentation that he had provided to the Planning Commission, which included a summary of the Comprehensive Plan and all the points to show consistency of the zoning district, be included in a resolution, should the Planning Commission chose to pursue the petition. He stated that citizens should maintain the right to request rezoning.

Ms. Morgan moved to amend the motion on the floor to provide a date certain for the postponement to take this matter up at the first regularly scheduled meeting in January. Mr. Trumble stated that he would prefer to wait until the first regularly scheduled meeting in February. Mr. Smith withdrew his second. Mr. Trumble withdrew his motion.

Mr. Hayes moved to withdraw the petition filed on November 2, 2010 to rezone Federal Lands. Mr. Maxey seconded the motion which carried 5 for and 2 opposed (Mr. Baty and Ms. Morgan).

Mr. Hayes moved to postpone discussion of this issue to the first regularly scheduled meeting in February. Mr. Trumble seconded the motion. Ms. Morgan offered a friendly amendment to place this item on the agenda for that date. Mr. Trumble and Mr. Hayes accepted the friendly amendment. Mr. Maxey asked that the original petition and the draft petition provided by Mr. Rosa be included with that agenda item. The motion carried unanimously.

**7. Appointment of Subcommittee for Budget and Work Plan.**

Mr. Maxey asked for volunteers for a subcommittee for the Budget and Work Plan. Mr. Maxey, Mr. Trumble, Mr. Hayes, and Mr. Baty volunteered. Mr. Maxey set the date of the subcommittee meeting for January 5, 2011 at 4 PM.

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

Mr. Groh reported on the status of the *James Gibson, et al v. The Jefferson County Planning Commission Case No. 09-C-364* case.

He provided a written opinion of the proposed Zoning Map policy including a redlined version of the policy including suggested changes. He stated that a hard copy of the official map should be submitted to the County Clerk for recordation. Mr. Maxey asked that this topic be postponed to the December 21, 2010 Planning Commission meeting.

Ms. Brockman discussed the Urban Growth Boundaries (UGB) and the validity of those boundaries on the failed zoning map. She reported that it was determined that County Commission had approved those boundaries and therefore, if the municipality agreed with those boundaries, they would be adopted. She stated the Corporations of Bolivar and Harpers Ferry, however, were suggesting different boundaries and those would need County Commission approval and that a public hearing would be scheduled.

Mr. Groh stated that the policy on Public Hearings and the Policy on Zoning Map and Text Amendments would require more discussion with staff. He requested to be able to follow up with this topic at the first regularly scheduled meeting in January. Mr. Maxey stated to place this on the agenda for the first meeting in January along with the policy for the submittal of supplemental information.

**9. Policy neutral technical amendments of the Zoning Ordinance.**

Mr. Barney stated that a full draft of these amendments would not be provided at that time. Ms. Brockman discussed having a work session to review a draft. Mr. Maxey directed that a work session be scheduled for January 18, 2011 at 6 PM. The draft amendments would be distributed at the work session.

**10. Discussion of Amended Land Development Review Fees.**

Ms. Brockman reported that much work had been done on the review fees however, it was not finalized. Mr. Maxey directed that this item be placed on the January 11, 2011 meeting.

**11. Director's Report.**

- **Activity Report.** The Activity Report was provided in the agenda packets.
- **Report back on Scott noise agreement and noise regulations.** Ms. Brockman reported that no information of validity had been found on the noise agreement. She stated that she would contact Mr. Dailey in order to gain direction on other documents to search.
- **Meeting dates in 2011.** Ms. Brockman provided a chart of regularly scheduled Planning Commission meetings and their relation to the closest holiday along with

proposal of meetings that the Planning Commission may want to cancel. She asked that the Commission review that document for discussion at a later meeting.

- **Follow up on use of topographic data from the County GIS office.** Ms. Brockman recapped that a policy regarding topographic data was being developed.
- **Report on 12/7/2010 Joint County Commission and Planning Commission meeting regarding the Blue Ridge Mountain Communities Watershed Plan.** Ms. Brockman stated that a summary, which included the action that had been taken and what the next steps were, was provided. Mr. Hayes reported that he was reviewing the recommendations and wanted to discuss them at a future date. Mr. Maxey asked that discussion of the Blue Ridge Mountain Plan be placed on the January 25, 2011 Planning Commission meeting. He asked that a summary of the citizen recommendations be provided at that meeting.
- **Upcoming County Commission agenda items:**
  - Urban Growth Boundary Approval Process (12/16/10)
  - Request to Schedule Evening Meetings in 2011 (January 2011)
  - Zoning Map Update and Zoning Map Policy (pending PC recommendation)
  - Wireless Telecommunications Ordinance Amendment Public Hearing (1/20/11 at 7 PM)
- **Upcoming Planning Commission Meetings.**
  - 12/21/10
    - Ms. Brockman stated a waiver had been submitted for Stasis.
  - 1/11/11 – 1<sup>st</sup> meeting of the new year
    - Election of Officers
  - Special Called Workshop for Policy Neutral Zoning Ordinance Amendments.
    - This topic was previously discussed under item #9 with a work session set for January 18, 2011 at 6 PM.

#### **12. County Commission Liaison Report.**

Ms. Morgan reported on the Tri-County Legislative Summit held December 7, 2010. She stated that Berkley County is proposing to increase the cap of Homeowner's Association Fees to the amount of \$1,000 for the Limited Expense Communities. She reported that Norwood Bentley, Counsel for Berkley County Commission Council, discussed issues regarding the tolling of bonds. Ms. Morgan stated that Morgan County plans to propose reducing the number of eligible voters required to petition for a referendum from 10% to 5%.

#### **13. Planning Commission Exchange.**

Mr. Maxey provided a written summary of the Water Advisory Committee meeting, which was held November 15, 2010, in the agenda packet.

Mr. Hayes provided a written summary of the Public Service District meeting, which was held December 6, 2010, in the agenda packet.

Mr. Trumble reported on the Economic Development Authority meeting. Mr. Trumble informed the Planning Commission that there would be a Jefferson County Day held in

Chareston. He asked that staff research when it would be held and what steps needed to be taken to participate. He also reported that the year round Farmer's Market was no longer and active project.

**14. President's Report.**

Mr. Maxey distributed a document from the Office of Disciplinary Counsel that responded to a complaint by Mr. Robert Reynolds, previously a Planning Commission President, regarding advice given by legal counsel to the Planning Commission concerning Far Away Farms. Mr. Maxey pointed out that the letter references a conflict of a Prosecuting Attorney's office counseling both the County Commission and the Planning Commission. Mr. Maxey asked that Planning Commission members review the document for discussion at a later date. Mr. Trumble asked that Mr. Groh provide the Planning Commission with how much of his time is dedicated to Planning Commission issues.

Mr. Maxey distributed a copy of a certificate from the Secretary of State's Office regarding Old Standard, LLC and the revocation of their license to do business in the State of West Virginia.

**15. Actionable Correspondence.** None.

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

Mr. Hayes moved to adjourn at 11:30 PM. Mr. Taylor seconded the motion, which carried unanimously. A detailed transcript of the meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.