

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
FEBRUARY 10, 2009

The Jefferson County Planning Commission met on Tuesday, February 10, 2009, with the following Commission members present: Robert Reynolds, President; Arnold Dailey, Vice President; John Sidor; Edward Dunleavy; John Maxey; Ellen May; Tom Kane and Jim Surkamp. Staff members present included Kirk Davis, Acting Director of Planning; Jennifer Snyder, Acting Zoning Administrator; Tom Hall, Planner; Jonathon Saunders, Engineer; James Casimiro, Assistant Prosecuting Attorney and Shannon Phillips, Planning Clerk.

Ms. Deming was absent with notification.

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

1. Approval of minutes.
  - a) December 9, 2008.

Mr. Maxey moved to approve the minutes from the December 9, 2008 Planning Commission meeting. Mr. Dunleavy and Ms. May abstained from voting because they were not present at the meeting. Mr. Sidor seconded the motion, which carried 6 for, 0 opposed and 2 abstentions.

- b) January 13, 2009.

Mr. Kane moved to approve the minutes from the January 13, 2009 Planning Commission meeting. Mr. Dunleavy seconded the motion, which carried 8 for and 0 opposed.

2. Citizen Communications. None.
3. Requests for postponement. None.
4. Final Plat Public Hearing for Needy Farm Minor Subdivision, Lots 1, 2 and 3-Residue (PC File #08-25). The property is to consist of 2 Single-Family Lots and 1 Single-Family Residue Lot on 128.079 acres. The property is located on the west side of Persimmon Lane approximately 0.3 miles south of Route 40 (Winebrenner Road). District: Shepherdstown; Map: 14; Parcel: 1.

Mr. Hall presented his staff report and recommended approval of the final plat. Mr. Saunders presented his staff report and recommended approval of the final plat. Mr. Kane asked about the access of two lots that appeared to run through Berkeley County and if arrangements had been made with Berkeley County for any necessary approvals. Mr. Hall and Mr. Saunders were unaware of any such arrangements. Mike Shepp with Dewberry was present on behalf of the applicant. Mr. Shepp stated that the access was inside Jefferson County. Mr. Reynolds opened the public hearing. There was no comment from the public. Mr. Reynolds closed the public hearing.

Mr. Dunleavy moved to approve the Final Plat for the Needy Farm Minor Subdivision, Lots 1, 2 & 3-Residue. Mr. Dailey seconded the motion, which carried 8 for and 0 opposed.

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5. Final Plat Public Hearing for John M. & Helen K. Snyder Minor Subdivision, Lots 1 & 2-Residue (PC File #08-30). The property is to consist of 1 Single-Family Lot and 1 Single-Family Residue Lot on 108.77 acres. The property is located on the south side of Edgewood School Road approximately 0.28 miles east of its intersection with Warm Springs Road. District: Shepherdstown; Map: 16; Parcel: 3.

Mr. Hall presented his staff report and recommended approval of the final plat with the addition of a note on the final plat to read “The structures shown as pre-1988 structures on this plat are considered pre-existing nonconforming uses and are exempt in their present state from the setback limits imposed in 1988 from the existing boundary lines; however no additions to the structure will be permitted within the setback limits shown upon this plat and any addition or expansion outside of the setback limits will be subject to setback and other requirements under the Jefferson County ordinances in place at the time any such addition is proposed.” Mr. Saunders presented his staff report and recommended approval of the final plat. Mike Shepp with Dewberry was present on behalf of the applicant. Mr. Reynolds opened the public hearing. There was no comment from the public. Mr. Kane requested clarification of the intent of the note that staff was recommending. Mr. Hall stated that additions to the structure could only be built on the portion of the structure outside of the setback limit. Mr. Reynolds closed the public hearing.

Mr. Dunleavy moved to approve the Final Plat for the John M. & Helen K. Snyder Minor Subdivision, Lots 1 & 2-Residue. Mr. Sidor seconded the motion which carried 8 for and 0 opposed

6. Discussion and possible action on the issues related to the conflicts between the current Zoning Ordinance and the current Subdivision Regulations.

Mike Wiley with Beallair Homes LLC was present and expressed his concerns with the conflicts between the two documents. He reminded the Planning Commission that he had submitted comments to the previous Director, Tony Redman and that he would be willing to submit them again.

Mr. Reynolds presented “A Way Forward” to the Commission. Mr. Reynolds reviewed each point and stated the purpose of the document was to foster dialog among the Commissioners that would assist with crafting a way to handle the current Zoning Ordinance and Subdivision Regulation conflicts.

*A Way Forward  
Jefferson County Zoning Ordinance*

1. *PC expresses its deep concern that the current non-traditional zoning ordinance does not support planning because it does not control either the location or the density of new growth.*
2. *PC recommends that the CC rescind its October 2, 2008, resolution adopting a traditional zoning ordinance.*
3. *Following its action to rescind, the CC requests that the PC draft and propose a new traditional zoning ordinance.*

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4. *PC conducts a public hearing concerning public concerns and problems with the rescinded traditional zoning ordinance.*
5. *PC re-drafts the rescinded ordinance.*
6. *PC conducts public hearings on a new proposed traditional zoning ordinance consistent with legal requirements.*
7. *PC forwards a recommended new proposed traditional zoning ordinance to the CC for consideration.*
8. *CC conducts public hearings on the new proposed traditional zoning ordinance consistent with legal requirements.*
9. *After conclusion of deliberations concerning the content of the new proposed ordinance, the CC conducts public hearing focused on the process of adoption, i.e., adoption by (a) CC resolution or (b) voter plebiscite.*
10. *CC moves forward with process (a) or (b) to adopt the new traditional zoning ordinance.*

Mr. Reynolds stated that he believed the Planning Commission should reaffirm its stance that the current Zoning Ordinance did not support planning because it did not control either the location or the density of new growth. He stated that he was not requesting imminent action on the document but would like to meet with Mr. Casimiro to draft a proper outline and recommendation on how to proceed for the county Commission. Mr. Maxey expressed concern that citizens had signed a petition requesting a referendum on the new zoning ordinance as written, and that making modest changes to avoid the referendum would force them to repeat the process unfairly. Ms. May expressed concern with the timeline for attempting alternative actions and with the Department's diminished resources for handling such. Mr. Kane recommended supporting the stayed Zoning Ordinance as drafted and felt the Planning Commission should encourage the County Commission to hold an election as soon as possible. Mr. Surkamp stated appreciation for Mr. Reynolds' efforts to give serious thought to the situation but was strongly opposed to deviating from the current course of action. Discussion ensued. A main concern for the Commission was for individuals who draft and signed the petition with the hope of having the opportunity to vote. Mr. Maxey and Mr. Dailey, Mr. Sidor and Mr. Dunleavy expressed their agreement with Mr. Kane's recommendation. Mr. Reynolds stated that he would have the Item re-noticed for the Commissioners' consideration.

7. Consideration of planning issues, discussion and possible action on the County Commission's Directive regarding the proposed Incorporation of Mannings.

Paul Ashbaugh, resident, property owner and the Incorporation of Mannings petitioner, was present and made a statement to the Planning Commission expressing the opinion that any input from the Planning Commission to the County Commission with regard to his application for incorporation should have been submitted at the public hearing held by the County Commission on February 4, 2009. Mr. Surkamp reminded Mr. Ashbaugh that the County Commission voted to keep the record open until 5:00 PM on Wednesday, February 11, 2009. Scott Smiley, resident and property owner of Jefferson County, was present to speak in opposition to the incorporation of Mannings with regard to the lack of service providers able to service the area. Mr. Dailey stated that he was at the County Commission public hearing and recalled Mr. Ashbaugh's attorney reference a state code section that would restrict any comment after the night of the public hearing. Mr. Casimiro stated that he believed the County Commission can still receive public comment since they voted to keep the comment period open for one week. Mr. Sidor was of the opinion that the petition did not meet the

requirements of the law; therefore, any discussion on the matter was not necessary. Mr. Kane stated that he believed it was appropriate for the Planning Commission to respond to the entire County Commission Directive. Mr. Casimiro explained that according to law, the County Commission was a fact finding body in the petition for the incorporation process. Because of this, the input they requested from the various groups, including the Planning Commission, would be for fact finding purposes and not for any type of legal sufficiency review. Mr. Reynolds presented a draft recommendation based on the fact that the incorporation of Mannings was not in the best interest of the County as a whole. Mr. Maxey read the recommendation for the record:

*Background and Summary of Deliberations:*

*During its rescheduled meeting of February 3, 2009, the Planning Commission received and conducted initial discussions of the following materials:*

- a. Request of January 23, 2009, from the County Commission.*
- b. The Petition of Incorporate, Statement for Plans Regarding Municipal Services, and the map of Territory Proposed for Incorporation as Mannings.*
- c. Memo of February 3, 2009, from James Casimiro, Esq., Assistant Prosecuting Attorney providing an outline of the process for municipal incorporation. (attachment A)*
- d. Draft analysis by Commissioner Ed Dunleavy finding that the incorporation petition fails to provide a detailed plan with supporting documentation for municipal services to the proposed municipality of Mannings. (Attachment B)*
- e. Draft Report of Findings regarding the consistency of the proposed incorporation of Mannings with provisions of the Jefferson County Comprehensive Plan. This draft report, prepared by staff of the Planning Department, concludes that the incorporation of Mannings is inconsistent with the Comprehensive Plan. (Attachment C)*

*Following initial presentation and review of these documents the Planning Commission determined that members needed additional time for analysis and consideration and formal action was continued to the regular meeting of February 10, 2009.*

*The Planning Commission, during its discussion on February 10, 2009, determined that it had not yet reached consensus on each and every particular of Attachment B and C. Nonetheless, the Planning Commission finds that the analyses provide convincing evidence that the petition for incorporation is inconsistent with the County Comprehensive Plan and does not provide a documented or reasonable plan for municipal services. Based on these overall findings, the Planning Commission concludes that the incorporation of Mannings is not in the best interests of the County as a whole.*

Mr. Sidor moved the Planning Commission finds that the analyses provides convincing evidence that the petition for incorporation is inconsistent with the County Comprehensive Plan and does not provide a documented or reasonable plan for municipal services and therefore is not in the best interest of the County as a whole. Mr. Dunleavy seconded the motion, which carried 8 for and 0 opposed.

Mr. Kane moved to request the President of the Planning Commission forward this subject letter to the County Commission not later than tomorrow. Mr. Maxey seconded the motion, which carried 8 for and 0 opposed.

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8. Director's Report.

Mr. Davis informed the Planning Commission that Jennilee Hartman has returned from leave and would be assisting Mr. Hall with various planning and zoning matters. Mr. Davis updated the Planning Commission on the Director search. He stated he hoped to schedule a search committee meeting by the end of February.

Mr. Hall presented a zoning update. He stated that Jennilee Hartman would be comparing the Zoning Ordinance with the Subdivision Regulations and digitizing the other ordinances in an effort to prepare all the information for combining it into a comprehensive report. Mr. Davis stated that a draft report would be available to the Commission within two weeks.

Mr. Davis explained to the Commission that he had several meetings with public representatives regarding the Ordinance rewrites. During those meetings the representatives expressed a strong desire to have the 340 Corridor and Mountain Studies started. Their biggest concern was for the studies to be comprehensive and honest. Mr. Davis reported that the in-house policies that were being written would be provided to the Commission soon.

Mr. Davis informed the Planning Commission that Arcadia requested a written formal opinion stating that Harvest Hills would be vested under the old ordinance. Mr. Casimiro confirmed the vesting position. Mr. Davis would draft correspondence and send it out the following week.

Mr. Reynolds called a break at 8:18 PM to change the CD. Mr. Reynolds called the meeting back to order at 8:24 PM.

Mr. Davis informed the Planning Commission that in two weeks he intended to go before the County Commission to request that Jennifer Snyder's Acting Zoning Administrator position be made permanent. Mr. Kane moved to support the Director's recommendation that we fill the position from within and pay a salary commensurate with the responsibilities. Mr. Sidor seconded the motion, which carried 8 for and 0 opposed. Mr. Davis stated to the Commission that he had a concern that the Zoning Administrator had no legal counsel when making interpretations. Mr. Casimiro explained that the County does not provide legal counsel for the Zoning Administrator.

9. President's Report. None.

10. Planning Priorities.

- a) Mountain Study
- b) 340 Corridor Study

Phillips Tousignaut, resident and property owner of Jefferson County, was present to express his interest in the Mountain Study and his willingness to be of assistance to the Planning Department. Scott Smiley, resident and property owner of Jefferson County, was present to express his interest in both the Mountain Study and the 340 Corridor Study. Mr. Sidor moved the Planning Commission adopt as its planning priorities the 340 Corridor and the Mountain Study upon the completion of the

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work on the new Zoning Ordinance. Mr. Maxey seconded the motion, which carried 8 for and 0 opposed.

11. Planning Commission Exchange.

Ms. May distributed a copy of the February 9, 2009 Public Service District (PSD) meeting minutes. She stated that the PSD was trying to negotiate a private partnership with Jefferson Utilities, Inc. for a design grant to develop a water system on the mountain. If ascertained to be a viable project there would be the possibility to receive a \$200,000.00 design grant. The PSD had voted unanimously to support the grant.

Ms. May also informed the Planning Commission that the Board of Education had sought a variance from the PSD for a new school claiming it should be exempt from fees payable to the PSD. There was a motion to make the Board of Education exempt from fees to the PSD which failed unanimously.

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

Mr. Casimiro informed the Planning Commission that any document that they produce as an individual should be forwarded to the Planning Department. It would then be distributed to the Planning Commission members via staff.

13. Actionable Correspondence. None

Mr. Sidor moved to adjourn at 9:03 PM. Mr. Dunleavy seconded the motion, which carried 8 for and 0 opposed. A detailed transcript of the meeting may be found on CDs #5 & #6. These minutes were prepared by Shannon Phillips.