

DRAFT MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
April 28, 2009

The Jefferson County Planning Commission met on Tuesday, April 28, 2009, with the following Commission members present: Robert Reynolds, President; Arnold Dailey, Vice President; John Sidor; Ed Dunleavy; John Maxey; Lynne Deming; Ellen May and Jim Surkamp. Staff members present included Kirk Davis, Acting Director of Planning; Jennifer Snyder, Acting Zoning Administrator; Jonathan Saunders, Engineer and Shannon Phillips, Planning Clerk.

Mr. Reynolds called the meeting to order at 7:03PM.

1. Approval of minutes.

Mr. Davis informed The Planning Commission that Staff would need additional time to complete the minutes of the April 14, 2009 Planning Commission meeting.

2. Citizen Communications. None.

3. Requests for postponement.

Mr. Davis stated that Item #5, Final Plat Public Hearing for the A. Bradley Askin, Trustee of the Aquilera Family Trust, Minor Subdivision, Lots A, B & C-Residue (PC File #09-10) has passed its 60 final plat approval expiration and is therefore taking automatic approval.

Mr. Reynolds directed that Item #5 be removed from the Agenda.

Mr. Davis informed the Commission that Item #6, Final Plat Public Hearing for the Allstadt's Corner Subdivision, Phase I, Lots 1-12 & 27-31-Residue (PC File #07-10) will require an extension due to a delay in receiving permits from the West Virginia Department of Highways.

Mr. Dunleavy moved to postpone the Final Plat Public Hearing for the Allstadt's Corner Subdivision, Phase I, Lots 1-12 & 27-31-Residue (PC File #07-10) until the May 26, 2009 Planning Commission meeting. Mr. Dailey seconded the motion which carried 8 for and 0 opposed.

Mr. Davis informed the Commission that Item #7, Final Plat Public Hearing for the William D. Rinker, Minor Subdivision Lots 1, 2 & 3-Residue (PC File #09-11) will require an extension due to a delay in receiving permits from the West Virginia Department of Highways.

Mr. Dunleavy moved to postpone the Final Plat Public Hearing for the William D. Rinker, Minor Subdivision Lots 1, 2 & 3-Residue (PC File #09-11) until the May 26, 2009 Planning Commission meeting. Mr. Dailey seconded the motion which carried 8 for and 0 opposed.

4. Declaration of violation for Russell Fritts, Inc. of the Improvement Location Permit Ordinance; Article 4, Section 4.2, for erecting a carport in the Kabletown District on Map 6B, Parcel 9 without an improvement location permit.

Mr. Davis stated that the property was no longer in violation.

6. Final Plat Public Hearing for the Allstadt's Corner Subdivision, Phase I, Lots 1-12 & 27-31-Residue (PC File #07-10). The property is to consist of 14 Single-Family (duplex) Lots, 2 Multi-Family Lots (consisting of 24 apartment units) and 1 Residue Lot (consisting of 3 apartment units) on 12.967 acres. 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). District: Harpers Ferry; Map: 9; Parcel: 39.1.

This Item was postponed until the May 26, 2009 Planning Commission Meeting.

7. Final Plat Public Hearing for the William D. Rinker, Minor Subdivision Lots 1, 2 & 3-Residue (PC File #09-11). The property is to consist of 2 Single-Family Lots and 1 Residue Lot on 6.09 acres. The property is located approximately 0.60 miles west of the Appalachian Trail and is surrounded on the north, west and south sides by WV Route 32 (Chestnut Hill Road). District: Harpers Ferry; Map: 15; Parcel: 80.

This Item was postponed until the May 26, 2009 Planning Commission Meeting.

8. Consideration and Vote on the Community Impact Statement (CIS) for the Far Away Farm Subdivision (PC File#08-28).

Mr. Dunleavy, Ms. Deming and Mr. Surkamp recused themselves and left the room at 7:06 PM.

Mr. Maxey moved that the Jefferson County Planning Commission accept the Community Impact Statement presented by Far Away Farm, LLC at the April 14, 2009 Planning Commission meeting with the following conditions:

- That the 17 concerns and recommendations included in the "Summary Findings and Recommendations" of the CIS Review and Evaluation prepared for the Planning Commission by URS Corporation be adopted by the applicant.
- That the applicant agrees to complete the design and construction of the trail system in the area proposed for public park dedication.
- That test well results or a hydrology study be prepared showing that there is sufficient volume of water available on the site to support the project without drawing down neighboring wells. If this should prove not possible, that a letter from the Shepherdstown Public Service District will be presented showing that service for the project can be provided by the District by a specific date.

- That a memorandum of understanding between the applicant and the Jefferson County Public Service District be obtained commitment to PSD operation and maintenance of any on site waster water treatment system. In the alternative, that a letter of commitment be obtained from the Shepherdstown Public Service District verifying their willingness and ability to provide centralized waste water treatment service to the project by a specific date.

Mr. Reynolds seconded the motion. There was further discussion regarding the third bullet point. Mr. Maxey stated that he would consider a friendly amendment that would provide clarification that the applicant did not provide enough information in the CIS to determine if water will be available to the subdivision. Mr. Maxey suggested the third bullet point be revised and broken into individual bullet points as follows:

- That test well results or a hydrology study be prepared showing that there is sufficient volume of water available on the site to support the project.;
- If sufficient water is not available, a letter from the Shepherdstown Public Service District will be presented showing that service for the project can be provided by the District by a specific date.;
- That draw-down tests shall be performed sufficient to assure surrounding residents that the project will not draw down their water wells.

Mr. Reynolds asked if there were any objections to the amendment. There were no objections from the Commission.

Mr. Dailey asked for an explanation of a draw down test. Mr. Saunders explained the process to the Commission.

Mr. Reynolds recalled Mr. Maxey's motion as modified. The motion carried 4 for and 1 opposed (Mr. Sidor).

Mr. Maxey moved that the Planning Commission request Mr. Casimiro to draft Findings of Fact and Conclusions of Law regarding the motion and make it available to the applicant and the public so the applicant has a clear understanding of the Planning Commission's decision. Mr. Maxey stated that he made this motion based on the Court's decision in Huntfield v. Jefferson County Planning Commission in 2000. The CIS was denied and the Circuit Court sent it back to the Planning Commission asking for Findings of Fact and Conclusions of Law to be produced. Ms. May seconded the motion.

Mr. Sidor asked Mr. Casimiro what the legal effect on the applicant would be. Mr. Casimiro stated there would be no legal obligation on behalf of the applicant.

The motion carried 3 for, 1 opposed (Mr. Dailey) and 3 abstentions (Mr. Dunleavy, Ms. Deming and Mr. Surkamp).

Mr. Dunleavy, Ms. Deming and Mr. Surkamp returned to the room at 7:24 PM.

9. Request for consideration by Peter Chakmakian for a proposed amendment to the Jefferson County Subdivision and Land Development Regulations regarding project time extensions.

Mr. Chakmakian presented the Planning Commission with his proposed amendment to the Jefferson County Subdivision and Land Development Regulations. Discussion ensued.

17. Consideration and vote on Chesapeake Bay Small Watershed Grants Full Proposal Project Narrative and Mountain Study Budget.

Mr. Maxey presented a complete Chesapeake Bay Small Watershed Grant Proposal and stated it was scheduled to be heard by the County Commission on April 30, 2009, in order to submit the proposal by the deadline date of May 1, 2009.

Ms. May moved that the Planning Commission endorse the Chesapeake Bay Small Watershed Grants Full Proposal Project Narrative and Mountain Study Budget. Mr. Maxey seconded the motion which carried 7 for, 0 opposed and 1 abstention (Mr. Dunleavy).

10. Director's Report.

Mr. Davis informed the Commission that Jennifer Brockman, newly appointed Director of Planning & Zoning, will be arriving May 26, 2009.

Mr. Davis stated that Roger Goodwin, Chief County Engineer, intends to have a proposed fee schedule for the Engineering Department created by June 1, 2009. Mr. Goodwin is still conferring with outlying counties to determine an appropriate fee schedule.

Mr. Reynolds asked if the previously scheduled Joint Workshop with the County Commission was still going forward on May 19, 2009, since the County Commission expressed their desire to have Ms. Brockman present at the workshop. Mr. Davis stated he would check with the County Commission to see if the workshop will need to be rescheduled.

11. Consideration and Vote on the Minor Plat Change Policy.

Ms. Snyder presented the Planning Commission with the following draft Minor Plat Change Policy:

MINOR PLAT CHANGE POLICY

On April 28, 2009, the Jefferson County Planning Commission voted to enact a minor plat change policy. This policy grants the Planning Commission Staff the authority to approve minor plat changes exclusively to lots within a minor subdivision which

received approval by either the Department of Planning or the Planning Commission. Minor plat changes shall allow lots created within said minor subdivision the right to relocate their well and septic reserve area(s). This policy is contingent upon the following conditions being met:

- 1. The applicant shall provide five (5) survey plats. Each plat must be originally signed and sealed by a licensed West Virginia surveyor and the West Virginia Health Department;*
- 2. All plats shall be technically acceptable and in accordance with the intent of the current Jefferson County Land Use Regulations; and*
- 3. A \$150.00 fee to process the minor plat change application. This fee is subject to change upon action by the Jefferson County Commission.*

Mr. Dunleavy moved to approve the Minor Plat Change Policy, dated April 14, 2009; as presented on April 28, 2009; effective May 1, 2009. Ms. May seconded the motion, which carried 8 for and 0 opposed.

12. Consideration of language for a final plat note regarding density calculations of the subdivided parcel.

Ms. Snyder presented the Commission with the following draft for consideration:

Density Note for plats:

"This subdivision, together with past subdivision of this property, has utilized all development potential or lots to which the _____ acre parent parcel is entitled under the terms of the Jefferson County Subdivision Regulations. No additional lots will be permitted subsequent to the approval of this plat of subdivision unless or until such time as the property may be rezoned or amendments to the County development regulations may permit additional subdivision".

"To date, this subdivision, together with all past subdivisions of this property, has utilized _____ development rights to which the _____ acre parent parcel is entitled to _____ under the terms of the Jefferson County Subdivision Regulations. _____ additional lots will be permitted subsequent to the approval of this plat of subdivision unless or until such time as the property may be rezoned or amendments to the County development regulations may permit additional subdivision".

Ms. Snyder gave the Commission an explanation of the two draft density notes. There was discussion between staff and the Commission with regard to the need for such a statement on the final plat.

13. President's Report.

Mr. Reynolds informed the Commission that County Commission has scheduled appointments to the Planning Commission for May 14, 2009.

14. Consideration and Vote on PC recommendations and briefing paper for forthcoming workshop meeting with the County Commission.

Mr. Davis gave explanation of an attachment to the Planning Commission Recommendations and Briefing Paper entitled Planning and Zoning Organizational Requirements.

Mr. Reynolds called a break at 8:18 PM in order to change the CD. Mr. Reynolds called the meeting back to order at 8:23 PM.

There was further discussion on the Planning and Zoning Organization Requirements as presented by Mr. Davis.

Mr. Reynolds asked Mr. Dunleavy if he would be will to work with Mr. Davis in getting this document edited and reformatted. Mr. Dunleavy expressed his willingness to do so.

Mr. Reynolds presented the Briefing Paper as prepared to the Commission. There was discussion and it was decided that Mr. Dunleavy would assist Mr. Davis with revising the document.

15. Planning Commission Exchange.

Mr. Reynolds distributed to the Commission the Motion of the Jefferson County Planning Commission to Intervene and Motion for Relief of Judgment filed in the Supreme Court of Appeals in the State of West Virginia and stated that it would be reviewed and decided upon Thursday, April 30, 2009 for a decision.

14. Consideration and Vote on Amendment to Bylaws.

Mr. Casimiro presented the Planning Commission with an amendment to the Planning Commission By Laws, based on the recently decided *Kaufman* case.

Mr. Dunleavy moved to amend the bylaws to reflect Mr. Casimiro's suggestion to read: "*Members shall base their votes on the evidence presented to the Commission which bears on the item under consideration. Consideration of matters outside the record, such as members' own experiences, is not permitted. Decisions shall be based solely on evidence presented or otherwise made part of the official record for an item*". Ms. May seconded the motion which carried 7 for and 1 opposed (John Maxey).

Mr. Casimiro stated he would present the amendment to the County Commission for approval.

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

Mr. Casimiro informed the Planning Commission that an outline of the Henry case was being prepared for the County Commission for review and that he would make the same outline available to the Planning Commission for review and discussion at the next Planning Commission meeting.

19. Actionable Correspondence. None

Ms. May moved to adjourn the meeting at 9:10 PM. Mr. Maxey seconded the motion, which carried 8 for 0 opposed.

A detailed transcript of the meeting may be found on CDs #24 and #25. These minutes were prepared by Shannon Phillips.