

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009

The Jefferson County Planning Commission met on Tuesday, July 14, 2009, with the following Commission members present: Arnold Dailey, President; Robert Reynolds, Vice-President; Lynne Deming, Secretary; John Maxey; John Sidor; Jim Surkamp and Thomas Trumble. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Jennifer Snyder, Acting Zoning Administrator; Jonathan Saunders, Engineer; Stephen Groh, Assistant Prosecuting Attorney; Jennilee Hartman, Planning Clerk and Shannon Phillips, Planning Clerk.

Ed Dunleavy and Ellen May were absent with notification.

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

1. Approval of minutes.

a. June 9, 2009.

Mr. Reynolds moved to approve the June 9, 2009 Planning Commission meeting minutes with the following corrections as recommended by the commission:

- i. Page 1, fourth paragraph, "...*Thomas Trumble will not be in attendance due to a prior obligation ~~to~~ as the President Shepherdstown Rotary Club but will be in attendance for the next meeting.*"
- ii. Page 4, first sentence, remove, "by Mr. Reynolds" replace with, "A draft letter of support was provided by **the Public Service District** for discussion by the Commission. Discussion ensued."
- iii. Page 4, second paragraph, second sentence, add, "*Ms. Deming offered a friendly amendment to include Mr. Dunleavy's expressed concerns regarding removing the sentence that reads, "Many people, including the Planning Commission, have made growth and business decisions based upon the provision of this high quality wastewater service in the Flowing Springs Watershed by the District."* and to be sure the letter is not too specific in supporting the location of lines but only the facility itself."

Mr. Sidor seconded the motion to approve the June 9, 2009 Planning Commission minutes as amended. The motion carried 6 for 0 opposed and 1 abstention (Mr. Trumble).

b. June 23, 2009.

Mr. Reynolds moved to approve the June 23, 2009 Planning Commission meeting minutes. Ms. Deming seconded the motion, which carried 6 for 0 opposed and 1 abstention (Mr. Trumble).

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009  
PAGE 2 of 2

2. Citizen Communications. None.
3. Requests for postponement. None.
4. 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.

Mr. Dailey opened the public hearing. David Minnis spoke in opposition of the project with regard to the loss of the flea market and any revenue brought in by the participants of the flea market. Mr. Minnis requested the Planning Commission delay their decision in this matter.

Mr. Maxey arrived at 7:10 PM.

All Alsdorf, a Harpers Ferry business owner, distributed a written statement to the Planning Commission and spoke in opposition of the project. Mr. Alsdorf expressed his concerns with regard to the historic value of the property.

Marie Uehling expressed her agreement with the previous comments made by Mr. Minnis and Mr. Alsdorf.

Barbara Humes, spoke in opposition of the project. Ms. Humes stated the county ordinances require the Planning Commission to consider certain issues such as physical impact, compatibility of the project with the surrounding area, land use and visual appearance, cluster of apartments. Ms. Humes expressed her concern regarding the possible destruction of the 1821 Allstadt's cemetery; in addition to the stormwater management lot being located in close proximity to the cemetery. Ms. Humes was also concerned about the adverse impact on sensitive natural areas such water recharge areas, water bodies and drainage into the Elks Run. Ms. Humes reported that data from Harpers Ferry waterworks shows an increase in cost of maintenance of water supply as development continues. Ms. Humes shared concerns of the county losing money if the flea market site is developed verses the additional cost of government services a subdivision would generate.

Richard Latteral questioned whether or not an increase in residential houses would be a positive gain to the County. Mr. Latteral also questioned how the development would be creating jobs and if the developer had figured what the cost of such a development would be to the County. Mr. Latteral stated a specific loss would be the loss of jobs affiliated with the flea market.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009  
PAGE 3 of 3

Beth Haney expressed her concern for falling market values due to housing overstock. Ms. Haney was of the opinion that the Community Impact Statement for the project was no longer valid considering the economic differences between now and when the marketing studies were originally performed.

Kari Allen Gotea stated it would be more economically feasible to market the parcel as a historical destination as opposed to another residential subdivision.

Dennis Frye, Chief Historian, Harpers Ferry National Historic Park stated that this site is one of only four sites left in Jefferson County that are directly related to the John Brown Raid. Mr. Reynolds asked Mr. Frye what actions, if any, the National Park Service has taken to acquire this property. Mr. Frye explained that the National Park Service cannot purchase the property directly, but they have been in contact with various third parties that have expressed an interest in purchasing the property on behalf of the National Park Service.

Scot Faulkner presented the Commission with a prepared statement and spoke on certain points. Mr. Faulkner stated that currently more houses are being foreclosed on in Jefferson County than are being sold. In the CIS it is stated there was a lack of product at the time. Mr. Faulkner further stated that when the CIS was presented unemployment levels were not as high as they currently are. The unemployment rate at the time of the CIS was 4.5% as opposed to the current level of 8.5%. Mr. Faulkner mentioned the fact that four full-time employees of the existing Wilt's Fruit stand and approximately 400 part-time vendors will lose their jobs and their incomes. Mr. Reynolds pointed out that the flea market is operated at this location with the permission of Dr. Gibson. Mr. Faulkner made reference to letters received from emergency service agencies stating they were stretched to their limits assisting already existing houses in the area. Mr. Faulkner expressed a strong concern with the possible sinkhole that is on the property. Mr. Faulkner questioned how the project could be complete if Article 9 of the Subdivision ordinance dealing with condominiums had not been considered as part of the review. Mr. Faulkner questioned why the final plat was not as detailed as the preliminary plat.

Mr. Dailey called the applicant to present and give rebuttal.

Mike Shepp with Dewberry & Davis LLC presented on behalf of the owner. Mr. Shepp stated that some of the issues the public raised were zoning related matters and he would only address the issues pertaining to subdivision related matters.

Mr. Shepp stated that the flea market is operated on this property at Dr. Gibson's sufferance and that many of the issues raised tonight were raised at the CIS public hearing. Mr. Shepp agreed that the economy has changed and pointed out that the expense of the project will be borne by Dr. Gibson's.

Mr. Shepp stated that Dr. Gibson placed the ordinary on the Historic Registry and plans to preserve the historical value of the site. Mr. Shepp replied to Mr. Frye's remarks regarding

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009  
PAGE 4 of 4

the sale of the property to the National Park Service. Mr. Shepp stated the owner has not been approached with an offer to purchase the property by anyone on behalf of the National Park Service.

With regard to Mr. Faulkner's statements about emergency services, Mr. Shepp stated emergency services were now covered by impact fees, therefore, the services would be provided after the building of the houses. Mr. Shepp stated a study had already been done with regard to the suspected sinkhole and that none were found.

Mr. Shepp stated that Section 9 of the Subdivision Ordinance addresses condominiums and this project does not intend to build condominiums for sale, rather apartments that will be for rent. Mr. Shepp stated that the multi-family designation on the final plat was done at the recommendation of Staff so as to provide full public disclosure about intended future use of the lots. In order to build on these lots Dr. Gibson will have to submit a site plan for approval. Mr. Shepp stated the preliminary plat was more detailed than the final plat because it is used for construction purposes, whereas the final plat is used for the transfer of land. Mr. Shepp commented on the issues of the suspected sinkhole being plugged and stated there is a pipe that runs under Route 340 in the drainage way and that it is a culvert, not a sinkhole.

Robert Denton, a geologist with Geo Concepts Engineering, was present to offer his opinion with regard to the suspected sinkhole on the property. Mr. Denton stated he was of the opinion that there is currently no physical evidence of a surface sinkhole. Mr. Maxey asked Mr. Denton if had done a recent investigation to determine if there was a sinkhole. Mr. Denton stated that he had last visited the site six months ago.

Mr. Shepp addressed comments by Ms. Humes and stated there was nothing to mitigate the effects of the impervious cover and that is what the storm water management ponds are designed to do, which was reviewed and approved by Staff and other governmental agencies.

Mr. Maxey asked Mr. Shepp if any third-party organizations had approached the owner with regard to purchasing the property. Mr. Shepp replied that he had asked Dr. Gibson the same question, and Dr. Gibson stated no one had approached him.

Mr. Daily called a break at 8:17 PM in order to change the CD. Mr. Dailey called the meeting back to order at 8:23 PM.

Mr. Dailey re-opened the public hearing for rebuttal.

Mr. Minnis asked the Commission that they consider the impact of their decision on the community as the situation now exists.

Ms. Haney read from Section 7.1, with regard to the CIS process, *"acceptance or rejection of the CIS informs the developer that a subdivision proposal is generally suitable or unsuitable and will so be considered during the review process, unless new or corrected information is*

*repealed at a later date*". Ms. Haney argued that the current economic situation is new information that has to be considered.

Mr. Faulkner stated that Kate McGinnis Wyatt with The Journey Through Hallowed Ground did contact Dr. Gibson two months prior with regard to purchasing the property. Mr. Faulkner again referenced Article 9 with regard to the multi-family lots. Mr. Faulkner stated to the Commission that Tom Ellis, a regular vendor at the flea market, has witnessed the suspected sinkhole.

Mr. Alsdorf agreed with Mr. Faulkner that Article 9 should be considered with regard to the multi-family lots.

Ms. Humes pointed out that no rebuttal was given to the points she raised previously.

Mr. Lateral was of the opinion that Mr. Shepp did not fully attempt to rebut all issues raised by the public.

Mr. Frye stated that the Journey Through Hallowed Ground did contact the National Park Service with regard to purchase and the National Park Service recommended that they contact the owner. No formal offer had been made, but there was contact with the owner.

Mr. Dailey closed the public hearing.

Mr. Shepp gave further rebuttal with regard to the economic impacts on the county and stated that it will be at least two years before any development of the property begins. Mr. Shepp also stated that the storm water management more than adequately covers runoff issues. Mr. Shepp stated that Section 9.3 was addressed on the preliminary plat which showed building and parking dimension. He stated that a site plan would be submitted before the apartment lots are developed.

Mr. Trumble asked Mr. Shepp if he felt the economic changes will have any effect on this project. Mr. Shepp stated that he did not feel that it would.

Ms. Hartman read the following from her staff report:

*"This final plat meets all the requirements that were in place at the time the subdivision was submitted. Staff recommends approval contingent upon the applicant securing a bond and recording the final plat within 90 days"*.

Mr. Saunders read the following from his staff report:

*"Project meets the requirements for final plat. Recommend approval"*.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009  
PAGE 6 of 6

Ms. Deming asked Ms. Hartman if she heard anything during the public testimony that would change her recommendation. Ms. Hartman replied in the negative. Mr. Reynolds asked Ms. Hartman if she was satisfied with the requirements of Article 9 not being applied. Ms. Hartman stated that Article 9 does not apply. Mr. Sidor wanted Staff to confirm that they were certain that there was no violation with regard to Article 9. Mr. Sidor asked if there were issues with the cemetery site. Ms. Hartman stated there was not.

Mr. Reynolds asked Mr. Saunders if he visited the site to inspect for existence of the suspected sinkhole. Mr. Saunders stated a site visit would have been done during the preliminary plat phase, which was prior to his employment with the county. Further discussion ensued.

Mr. Dailey asked Staff if the applicant had met all Zoning and Subdivision Ordinance requirements. Staff stated they had.

After discussion with Steven Groh, Assistant Prosecuting Attorney, Mr. Maxey moved to go into a 10 minute executive session. Mr. Surkamp seconded. Mr. Trumble offered a friendly amendment to take as much time as required. Mr. Maxey accepted the friendly amendment. Mr. Surkamp seconded. The motion carried 4 in favor and 3 opposed (Mr. Dailey, Ms. Deming and Mr. Sidor).

The Planning Commission entered executive session at 9:20 PM. The Planning Commission returned to open session at 9:30 PM.

Mr. Surkamp moved to approve the final plat for the Allstadt's Corner Subdivision Phase I, Lots 1-12 & 27-31-Residue (PC File #07-10) on the provision that a written permission from the National Park Service in Harpers Ferry be provided allowing the Allstadt's property to utilize the water and sewer service easements. Mr. Maxey requested an amendment to strike the word sewer. Mr. Surkamp accepted the friendly amendment and Mr. Maxey seconded the motion. Discussion ensued. Mr. Dailey called the question. Mr. Dailey recalled the motion. The motion failed 3 in favor and 4 opposed (Mr. Reynolds, Mr. Dailey, Ms. Deming and Mr. Sidor). Mr. Reynolds moved to approve the final plat for the Allstadt's Corner Subdivision Phase I, Lots 1-12 & 27-31-Residue (PC File #07-10). Ms. Deming seconded the motion, which carried 7 for 0 opposed.

5. Director's Report. Ms. Brockman informed the Planning Commission that James Casimiro will handle the complaint that was filed on behalf of Jane Stone, with regard to her variance denial. Ms. Brockman presented an example of the Planning & Zoning Department weekly calendar. She also stated she has applied to serve on Leadership Jefferson. Ms. Brockman stated that the County Commission has requested an update from her on the issues with Far Away Farm. Mr. Dailey asked that Ms. Brockman set up a joint meeting with the County Commission. Ms. Brockman informed the Commission that she would be presenting a proposed amendment to the County Commission with regard to the line item error that was made in the budget.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 14, 2009  
PAGE 7 of 7

6. County Commission Liaison Report. None.
7. Planning Commission Exchange. Mr. Sidor was of the opinion that the public should be aware of the staff's recommendation prior to the public comment period. Discussion ensued. Ms. Deming was appointed by the Commission to act as liaison to the Development Authority.
8. President's Report. None.
9. Reports from Legal Counsel and legal advice to PC. Mr. Groh introduced himself to the Commission and distributed a copy of the Jane Stone Complaint. Discussion ensued.
10. Actionable Correspondence. None.

Mr. Trumble moved to adjourn the meeting at 10:29 PM. Mr. Surkamp seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CD #36, 37 and 38.. These minutes were prepared by Shannon Phillips.