

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
MARCH 11, 2008

The Jefferson County Planning Commission met on Tuesday, March 11, 2008 with John Sidor as President presiding. Robert Reynolds, Vice President, Tom Kane, Arnold Dailey, Lynne Deming, Jim Surkamp, Ellen May and Edward Dunleavy were present. Staff members present were Tony Redman, Director of Planning; Sherry Kelly, Deputy Director of Planning; Damien Davis, County Engineer; Tom Hall, Landscape Architect/Planner; and, Shannon Hayden, Administrative Assistant.

Todd Baldau was absent with notification.

Mr. Sidor called the meeting to order at 7:06 p.m.

1. Approval of Minutes. Ms. May, Mr. Surkamp and Mr. Dunleavy abstained from voting on the minutes because they were not present at the last meeting. Mr. Sidor suggested the following changes:
 - a. Page 1, line 7; include Ellen May as being absent with notification and Todd Baldau as arriving late with notification.
 - b. Page 3, item 6, line 4, delete "and Mr. Sidor".
 - c. Page 3, item 6, last sentence, replace "Todd" with "Mr."
 - d. Page 3, item 7, next to last sentence, remove "an exit only with an exit sign" and replace with "be a two way for incoming and outgoing traffic".
 - e. Page 3, item 8, line 9, insert replace "Mr. Baldau recused himself and left the room." with "Mr. Baldau recused himself because he is involved in litigation with Louis Athey, and left the room."
 - f. Page 4, line 3, replace "Tom" with "Mr." and change "returns" to "returned".

Mr. Reynolds moved to approve the minutes of the February 26, 2008, Planning Commission meeting. Ms. Deming seconded the motion, which passed 4 for and 3 abstentions. (Ms. May, Mr. Surkamp and Mr. Dunleavy)

2. Request for postponements. None.

3. Final Plat Public Hearing for the William H. Scott Inter Vivos Trust Final/Merger Plat. Ms. Kelly and Mr. Davis recommended approval of the final plat. Peter Chakmakian was present to answer Planning Commissioners' questions and gave a presentation. Mr. Sidor questioned the "shaded" area on the plat. Mr. Chakmakian stated that area would be reserved for storm water management. Mr. Sidor opened the public hearing. There were no comments from the public. The public hearing was closed. Mr. Reynolds moved to approve the final plat. Ms. May seconded the motion, which carried unanimously.

4. Discussion of the proposed Charles Town "Townscape Boundary". Jeremy Camp with the City of Charles Town gave a presentation on urban growth and requested a work session to

pursue further discussion with regard to growth and annexations. Mr. Surkamp asked whether sewer services and urban growth areas are going to be combined. Jeremy Camp stated that he had seen that before. Mr. Reynolds asked about the draft ordinance allowing for urban growth, does it specify areas and would this be the right direction to go in. Mr. Sidor asked what the content of the work session would be. Jeremy Camp stated it would be to bring growth policies together. Tony Redman, Director of Planning, asked that an initial agenda be put together stating the need for a work session. Mr. Reynolds suggested a joint work session in order to share information. Jeremy Camp agreed to submit a report and wait for a response and proceed from there. Mr. Kane moved to approve a workshop. Mr. Dunleavy seconded the motion, which carried unanimously.

5. Declaration of violation for Gary Funk and Bonnie Wright of the Improvement Location Permit Ordinance for a gazebo. Mason Carter, Ordinance Compliance Office, provided a memorandum to the Planning Commissioners stating that Mr. Funk and Ms. Wright have applied for a permit; therefore are no longer in violation.

6. Site plan approval and issuance for the Improvement Location Permit (ILP) for the 1057 Jefferson Avenue Limited Site Plan for Frank Chow. Ms. Kelly and Mr. Davis recommended approval of the site plan and issuance of the ILP. Jay Fairley, with Huntley, Nyce & Associates, was present to answer Planning Commissioners' questions. Mr. Sidor opened the hearing to the Public. There were no comments from the public. The public hearing was closed. Mr. Reynolds moved to approve the site plan and issuance of the ILP. Mr. Kane seconded the motion, which carried unanimously.

7. Site plan approval and issuance for the Improvement Location Permit for Potomac Metals, Kramer Subdivision, Lot 3. Ms. Kelly and Mr. Davis recommended approval of the site plan and issuance of the ILP. Mr. Sidor asked if there was adequate space in the rear of the building for two-way traffic and dumpsters. Mr. Davis stated that there was sufficient room. William Pompeii with Associated Engineers was present to answer Planning Commissioners' questions. Mr. Sidor opened the public hearing. There were no comments from the public. The public hearing was closed. Mr. Kane moved to approve the site plan and issuance of the ILP. Mr. Reynolds seconded the motion, which carried unanimously.

8. Request by Raymond and Jodi Piatt for a variance to lift the single-family restriction for the Westwind Subdivision to establish a vineyard on 2 of the 5.14 acres. Ms. Kelly recommended approval of the variance with the following conditions: the applicant demonstrates that the use meets the criteria set forth in the Zoning Ordinance as a Home Occupation Level 1; the only change to the exterior of the property will be the area to grow grapes; there will be no other changes to the outside appearance of the property; and no sales, tastings, or other events will be conducted at the home. Mr. Davis deferred to the County Planner. Mr. Sidor asked staff what difference there would be between current and proposed zoning if variance was granted. Mr. Redman stated that he did not know off hand what the proposed zoning for this property is. Mr. Reynolds asked if, other than in a minor subdivision in a rural area, this type of variance would be granted. Ms. Kelly stated that it would be granted with a zoning certificate application.

Raymond Piatt, applicant, stated that this is intended to be a hobby only, and that he may have future prospects of off-site sales. Mr. Sidor asked the applicant if he eventually decided to sell his product or hold tastings, would he require more than 2 acres. Mr. Piatt stated he would not. Mr. Sidor opened the public hearing. David Bryant, resident of Westwind Subdivision, was present and commented on an email that was sent to the Planning Department in protest of the variance. Mr. Bryant stated that he and his wife did discuss issues with Mr. and Mrs. Piatt and that he and his wife are now in support of the variance. Ms. Deming questioned Mr. Bryant's concern about water use. Mr. Bryant stated that he was assured by the Piatts that they are not intending to water the grape fields, the water supply will come from natural rain water only. Mr. Sidor read a second email submitted in opposition from Robert Ott, resident. Mr. Ott was not present for comment. The public hearing was closed. Ms. Deming questioned Mr. Piatt on the water supply issue. Mr. Piatt stated that there will be no watering and that the growing process will be all natural. Mr. Sidor questioned the use of pesticides. Mr. Piatt assured the Planning Commissioners that no pesticides would be used and that he intends to grow his grapes organically. Mr. Dailey asked about covenant restrictions. Mr. Piatt stated that there were no covenants placed when he purchased his property. Mr. Reynolds moved to grant the variance. Mr. Dailey seconded the motion, which carried unanimously.

9. Request by Victory Free Will Baptist Church for a variance from providing a site plan for a 30' x 50' covered pavilion for church gatherings. Ms. Kelly deferred to the County Engineer. Mr. Davis recommended denial of the variance. The applicant was not present to answer Planning Commissioners' questions. Mr. Sidor asked staff if the applicant was notified of the hearing. Mr. Davis stated that he did speak with the applicant and that they were aware. Mr. Reynolds moved to deny the variance. Ms. Deming seconded the motion, which carried unanimously.

10. Request by Brett Lewis for a variance to lift the five-year time restriction on a parent to child exemption lot allowing the property to be sold 1 year and 2 months early. Ms. Kelly recommended denial of the variance. Mr. Davis deferred to the County Planner. Brett Lewis was present to answer Planning Commissioners' questions. Mr. Lewis gave statement as to the hardships being suffered due to the restriction of sale. Mr. Sidor opened the public hearing. There were no comments from the public. The public hearing was closed. Mr. Sidor asked Ms. Kelly if this type of variance had been granted in the past. Ms. Kelly confirmed that it had. Ms. Deming asked Mr. Lewis about Mrs. Lewis' employment location. Elizabeth Lewis gave an explanation of her employment location and travel issues. Mr. Reynolds moved to grant the variance. Ms. May seconded the motion, which passed 7 for and 1 in opposition. (Mr. Dunleavy)

11. Request by Daniels Forest for a variance to allow for a 12 month extension of time to complete the final plat process. Ms. Kelly recommended approval of the extension. Mr. Davis deferred to the County Planner. Mr. Sidor asked if the final plat process was started before litigation began. Ms. Kelly was unsure of the date of litigation. Peter Chakmakian was present to answer Planning Commissioners' questions. Mr. Chakmakian stated that the final plat would have been completed if it were not for a change in water treatment plants since the plans were

originally developed. Mr. Reynolds questioned if the reengineering of the sewer plant was initiated by the applicant. Mr. Chakmakian stated that it was not. Ms. May asked if the requested extension of time would be adequate if there were another change in sewer plants. Mr. Chakmakian stated that it would be.

Mr. Sidor called a break at 8:18 p.m. in order to change the CD. The meeting resumed at 8:24 p.m.

Mr. Sidor questioned if the extension was requested for this purpose only, or if there were other obstacles that have delayed the progress. Mr. Chakmakian stated that the extension was for this purpose only and referred to a letter from the Jefferson County Public Service District. Sue Lawton, with the JCPSD was present to answer the Planning Commissioners' questions. Mr. Sidor and Ms. May asked about the difference between the use of Flowing Springs or Breckenridge facilities. Ms. Lawton stated that it would have to be specified on the plans for original approval. Mr. Sidor opened the public hearing. There were no comments from the public. The public hearing was closed. Ms. May asked Ms. Kelly about the "life expectancy" of the Community Impact Statement. Ms. Kelly stated that the CIS was good for two years. Mr. Sidor stated that the impacts could be very different now, compared to 2002. Mr. Kane moved to approve the extension of time for the final plat. Mr. Dunleavy seconded the motion, which passed 6 for and 2 in opposition. (Mr. Sidor and Ms. May)

12. Request by Blue Stone Investments, LLC for a variance to allow the use and acceptance of alternative wastewater treatment systems or approvals of such systems allowable by WVDEP, WVDHHR and the Jefferson County Health Department. Ms. Kelly recommended granting the variance. Mr. Davis recommended granting the variance with the following condition: that the applicant is to provide a health department permit (State or Local) for the proposed "alternative" waste water treatment system before the final plat can be recorded. Bob Denton and Jennifer Brant with Potomac Professional Services were present to answer Planning Commissioners' questions. Mr. Denton gave a presentation. Mr. Sidor asked about a waste load allocation letter. Mr. Denton stated they have the letter with allocation for at least twenty homes, however, they are keeping a minor subdivision of three homes only. Joe Hankins, Chairman for Jefferson County Public Service District, feels the Planning Commission should be fully aware of the aspects of the variance and feels more information is needed before granting a variance because the waste load allocation is good for only six months. Mr. Surkamp moved to deny both variances. The motion died for lack of second. Mr. Hankins recommended discussion with the applicant as to options. Mr. Sidor asked the applicant that he work with the PSD to present a long-term maintenance plan. Mr. Redman asked that no action be taken on the variance at this time and that the applicant meet with the PSD. Mr. Denton stated that he is willing to work with the PSD. Mr. Dailey expressed concern that property can be sold at a later time and there would be no covenant jurisdiction by the County. Mr. Davis stated that approval would have to be granted by the State before a sale could happen. Mr. Sidor opened the public hearing. Fred Blackmer requested that the variance be considered individually and not based on PSD approval. Mr. Sidor moved to not take any action at this time and to have the applicant work with the PSD. The motion died for lack of second. Mr. Kane moved for approval with an alternate waste

system plan. Ms. Deming seconded the motion. Mr. Davis recommended the original condition be placed on the applicant. Mr. Kane and Ms. Deming accepted the friendly amendment from staff. Mr. Sidor moved to approve the variance with an amendment to provide a long-term maintenance contract with an independent oversight agency. The motion died for lack of a second. There was further discussion by the Planning Commission regarding waste load allocation. Mr. Sidor moved again to approve the variance with an amendment to provide a long-term maintenance contract with an independent oversight agency, which passed 6 for and 2 in opposition. (Mr. Surkamp and Ms. May)

13. Request by Blue Stone Investments, LLC for a variance to advance to the final plat stage following the approval of the previously stated variance. Ms. Kelly and Mr. Davis recommended granting of the variance. Jennifer Brant with Potomac Professionals was present to answer Planning Commissioners' questions. Mr. Sidor opened the hearing to the public. There were no comments from the public. The public hearing was closed. Mr. Reynolds moved to grant the variance. Mr. Dailey seconded the motion, which passed 6 for and 1 in opposition. (Mr. Surkamp)

14. Director's Report on office activities and questions. Mr. Sidor inquired as to the Zoning Ordinance draft status and review by the County Commission. Mr. Redman stated that it was still in process and would come to the Planning Commission for review as soon as the County Commission review was complete, which he expects will not be prior to late April or early May. Ms. May asked if any other towns/ cities have expressed concern regarding the proposed Zoning Ordinances. Tom Hall advised the Planning Commission that State Code allows municipalities to turn over their regulation of land use their regulation of land use to the County.

15. Planning Department Budget 2009. Discuss and/or action on the "Annual Report and Budget Statement" document submitted by Bob Reynolds at the February 26, 2008 Planning Commission meeting. Mr. Reynolds stated that a Planning Department and Zoning Department budget review with the County Commission is scheduled for March 12th at 10:00 a.m. Mr. Reynolds moved to approve the Annual Report and Budget Statement. Mr. Kane seconded the motion, which passed 7 for and 1 in opposition. (Ms. Deming)

16. Planning Commission Exchange. None.

17. Discussion of Current Zoning Ordinance. Mr. Redman stated that there are a lot of minor changes being made and the progress is moving along and there will be a rewrite provided in approximately two weeks. Mr. Surkamp asked about Mr. Redman's availability for a work session. Ms. Deming asked if there were an average percentage of professionals requesting changes as opposed to property owners themselves. Mr. Redman stated that the majority of requests for the Subdivision Regulation changes did come from professionals; however, the Zoning Ordinance change requests have come primarily from property owners.

18. Proposed amendment to current Zoning Ordinance.

19. Discussion: Judge Steptoe Decision. Discussed under item #22.
20. Discussion of PC action on zoning and subdivision rewrites. (Sidor) Discussed under item #17.
21. Planning Commission steps Re: Subdivision Draft.
22. Reports from Legal Counsel. Shenandoah School - Vote on Findings of Fact and Conclusions of Law.

James Casimiro, Assistant Prosecuting Attorney, gave a presentation on House Bill 4511. Mr. Casimiro summarized highlights from the Bill with regards to Sec. 8A-7-7, Sec. 8A-7-8 and Sec. 8A-7-13 and answered questions presented by the Planning Commissioners.

Mr. Sidor called a break at 10:12 p.m. in order to change CD. The meeting resumed at 10:18 p.m.

Mr. Casimiro reviewed the draft Decision Denying Variance Application of Shenandoah School that is to be filed on behalf of the Jefferson County Planning Commission for approval by the Planning Commission. Mr. Reynolds inquired as to the term “lawfully” on page 5 number 6. Mr. Casimiro stated that he would look into it, and if need be he will remove the word “lawfully”. Mr. Reynolds moved to approve the draft decision. Mr. Dunleavy seconded the motion, which passed unanimously. Mr. Kane abstained since he was not present for the original variance hearing.

Mr. Casimiro gave a summarization regarding Section 8A and 824 and the fact that there has been an appeal filed with regard to Judge Steptoe’s decision.

Mr. Dunleavy stated that he spoke with a County Commission member who asked if there was anything that could be done to amend the current Zoning Ordinance to follow Judge Steptoe’s decision. Mr. Dunleavy recommended that Article 6 and Article 7 be repealed. Mr. Kane asked if a public hearing would be needed if this repeal were considered. Mr. Casimiro confirmed that a public hearing would be needed. Mr. Dunleavy requested that it be scheduled for the next meeting. There was discussion between the Planning Commissioners and Mr. Casimiro regarding the process of such discussions and notification to the public.

23. Legal Advice to PC. None.
24. Actionable Correspondence. None.
25. Non-Actionable Correspondence. None.

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Mr. Dunleavy moved to adjourn the meeting at 11:00 p.m. Mr. Dailey seconded the motion, which carried unanimously. A detailed transcript of this meeting may be found on CD # __ . These minutes were prepared by Shannon Hayden.