

DRAFT MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
APRIL 8, 2008

The Jefferson County Planning Commission met on Tuesday, April 8, 2008 with John Sidor as President presiding, Robert Reynolds, Vice President; Tom Kane, Edward Dunleavy, Ellen May, Jim Surkamp and Arnold Dailey were present. Staff members present were Tony Redman, Director of Planning; Damien Davis, County Engineer; James Casimiro, Assistant Prosecuting Attorney and Shannon Hayden, Administrative Assistant.

Lynne Deming was absent with notification.

Sherry Kelly, Deputy Director of Planning, was absent; therefore, Mr. Redman read from the Staff Report prepared by Ms. Kelly.

Mr. Sidor called the meeting to order at 7:01 PM.

1. Approval of minutes. The following changes were suggested by the Planning Commission:
  - a) Page 1, second paragraph; replace “complication with the” with “nonfunctioning”.
  - b) Page 1, Item #1(h); clarify the change was suggested by Mr. Reynolds.
  - c) Page 2, Item #3, 5<sup>th</sup> sentence; insert “moved to”, after “Mr. Reynolds” and change “approved” to “approve”.
  - d) Page 2, Item #4; add to the end of sentence “until April 8, 2008.”
  - e) Page 2, Item #5, line 10; change “populus” to “poplar”.
  - f) Page 2, Item #5, line 11; between the words “service” and “proposed” insert, “Section one and their intention to service the entire”.
  - g) Page 3, first paragraph, line 2; remove “Flowing Springs plant and the”.
  - h) Page 3, first paragraph, line 7; correct “intension” to read “intention”.
  - i) Page 3, line 14; between the words “stage.” and “Mr. Baldau” insert “According to the CIS, the development was designed to be integrated with the topography, however the design seems to ignore the topography of the contiguous property to the southeast. That property is 30 to 40 feet higher than the property in your development, which implies storm water issues within your development. Mr. Gates replied that they were aware of that issue and proposed that grading within the development would solve any potential problem.”
  - j) Page 4, Item #8, line 4; replace “even to express personal views” with “regarding a vote taken at a public Planning Commission meeting”.

Mr. Reynolds moved to approve the minutes of the March 25, 2008 Planning Commission meeting with the suggested changes. Mr. Surkamp seconded the motion, which carried unanimously.

2. Requests for postponement. None.

3. Postponed from the March 25, 2008 meeting. Final Plat Public Hearing for the Eastland Subdivision, Section V-C, Lot 123 & Residue. Ms. Kelly's staff report included a recommendation for approval. Mr. Davis also recommended approval of the final plat. The Planning Commission asked staff why the review and approval of the final plat was late and expressed concern that the new lot may be in a flood plain. Mr. Redman and Mr. Davis clarified that no actions by the applicant resulted in the late review/approval of the final plat. Steve Bittinger with Eastland Associates of WV was present to answer Planning Commissioners' questions. Mr. Bittinger stated that in the CIS the lot was originally shown as a lot, but was made into common area and that it is not in a flood plain. 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. Request by Annette van Hilst on behalf of Jefferson Utilities, Inc. for a variance to lift the single-family restriction in order to subdivide Lot 24 in the Bardane Industrial Park and for advancement to the final plat stage. Ms. Kelly's staff report recommended approval with the condition that any development of the parcels be required to submit a site plan to address County Ordinance requirements. Mr. Davis deferred to the County Planner. Mr. Sidor asked staff why single-family use limitation was applied in a Business Park zone. Mr. Redman deferred to the applicant. Annette van Hilst with Dewberry was present to answer Planning Commissioners' questions. Ms. van Hilst stated that the ordinance states that when a single lot is created it will carry a single-family use condition without consideration of the original zoning. Mr. Kane asked if any additional easements would be needed for a water tower. Ms. van Hilst stated that no additional easements would be needed. There was some discussion regarding the sales process of the lot by the Planning Commission and Ms. van Hilst. Mr. Sidor opened the public hearing. There were no comments from the public. The public hearing was closed. Mr. Reynolds moved to grant the variance. Mr. Dunleavy seconded the motion. Mr. Kane made a friendly amendment to include staff's condition. Mr. Reynolds and Mr. Dunleavy accepted the friendly amendment. The motion to grant the variance with staff's condition passed unanimously.
5. Request by Potomac Professional Services, LLC for reconsideration of a previous motion for the Blue Stone Investments, LLC Minor Subdivision Variance. The variance was 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's staff report deferred to the County Engineer. Mr. Davis stands by his original recommendation from the March 11, 2008 Planning Commission meeting. Matthew Powell with Potomac Professional Services was present to answer Planning Commissioners' questions. Mr. Powell stated that they would like the same variance decision as Greenbrier Investments LLC, that was heard during the September 25, 2007 Planning Commission meeting; which was granted with the condition that the applicant provides an approval of the

subdivision by the Health Department and/or Health Department permit for the proposed “alternative” wastewater treatment system before ownership of any lot is transferred or a building permit is issued and that a note be put on the final plat to that effect. There was further discussion by the Planning Commission. Mr. Dunleavy moved to grant the variance with the same condition placed on the Greenbrier Investments variance. Mr. Reynolds seconded the motion; which passed 4 in favor and 3 opposed. (Mr. Dailey, Mr. Surkamp and Ms. May)

6. Director’s Report on office activities and questions. Mr. Redman distributed a handout on subdivision regulation comments along with Mr. Casimiro’s draft of proposed covenants to protect dedicated open space. Mr. Redman gave the Planning Commissioners an update on the County Commission’s review of the Zoning Ordinance and zoning map.

Mr. Sidor called a break at 8:24 PM in order to change CD. The meeting resumed at 8:31 PM.

Mr. Redman stated that the County Commission may be referring the Zoning Ordinance Draft to the Planning Commission for review and recommendation in approximately four weeks.

7. Planning Commission Exchange. Ms. May made reference to a map of County watershed that was brought in by Sue Lawton with the Public Service District. Ms. May discussed this map with Mr. Redman at his office. Mr. Redman stated that he has a meeting planned with Barbara Hume, Todd Fagan and Tom Hall to assist the Elk Run Watershed committee in preparing better maps of the Watershed.
8. Discussion of PC action on zoning and subdivision rewrites. Discussed under Item #6
10. Reports from Legal Counsel. Mr. Casimiro informed the Planning Commission that the Motion to Stay Judge Steptoe’s decision was denied and that a Petition for Appeal will be filed by June 26, 2008. Mr. Casimiro gave an update on the Shenandoah School case and stated that the school is no longer being operated from the residence and that he has given a report to Mason Carter, Ordinance Compliance Officer.
11. Legal Advice to PC. None
9. Tabled from the March 25, 2008 meeting. Proposed amendment to the current Zoning Ordinance. There was discussion among the Planning Commissioners regarding the Proposed Amendment. Mr. Dunleavy moved that the Jefferson County Planning Commission advise and encourage the County Commission of Jefferson County to delete from the current Jefferson County Zoning Ordinance: 1) Article 6. Development Review System, 2) Article 7. Procedural Requirements for Review. Article 6 and 7 would be replaced with a Rural Residential Land Development Article that limits development in the Rural Zone (See

attached). Ms. May seconded the motion. There was further discussion regarding the motion. Mr. Reynolds moved to table this discussion until the June 23, 2008 Planning Commission meeting. Mr. Dailey seconded the motion, which passed 5 in favor and 2 opposed. (Mr. Sidor and Mr. Dunleavy).

12. Actionable Correspondence. None

13. Non-Actionable Correspondence. A letter of gratitude from the Town of Bolivar.

Pursuant to the request of Ms. Deming, Mr. Sidor asked that the following text from Mr. Dunleavy's email (speaking for himself only) be made a part of the record of this Planning Commission meeting:

"The rationale for the proposed amendment to the current Zoning Ordinance is to negate Judge Steptoe's recent decision and try to deal with 4511. My suggestion is that we also use this proposal in the major re-write. The premise is that we need to confuse that "minority of anti-zoning people" and be relentless in our attempt to pass a Zoning Ordinance that will lead to slower and more thoughtful residential growth in the county.

First, we need to amend the current ordinance with my proposal that will limit growth in the rural zone. Because the proposal does not change the Zoning map or change density it will not be subject to the certified letter requirement of 4511. It will still be subject to a petition but since there are many subdivisions in the rural zone, it is unlikely that the suggested amendment would be defeated in a vote by residents of the rural zone. Because of that, the "anti-zoning people" would not be sure if they should challenge the amendment via petition especially if the major revision is still in progress. Then we need to place, in the major revision, the same limits on the AG zone that my proposal places on the Rural Zone in the current ordinance.

It seems to me that 4511 is the direct result of the "anti-zoning people", developers and large landowners appearing to be agreeable, and then working against everything that the ordinance re-write is trying to do. Part of the problem is that the current draft is asking large landowners to give up the value of 85% of their land without any economic benefit and believing that a 20 year deed restriction as opposed to a conservation easement is enough to get them to agree. Let us not forget the Panama Canal or Hong Kong. Both subject to 99 year leases that expired. A 20 year deed restriction only delays a solution to the problem. In my opinion, 4511 is the direct result of not giving large land-owners the value of their development rights on 85% of their land. My proposal will give large landowners the economic benefit of a tax deduction if they place 70% of their land in a conservation easement. I think that if we give back 15% of their land with an economic benefit through the tax deduction, we are less likely to face a petition and vote. It will cost the County nothing, the IRS will pay for it. Politics is compromise, isn't it?

Then, on 9/29/08 if the County Commission repeals the current Zoning Ordinance (with my amendment) as of 12/30/08 and enacts the major revision as of 1/1/09, not as an amendment but as a new Zoning Ordinance, there would be no certified letter requirement.

More importantly, the "anti-zoning people" would face a dilemma. If they successfully challenge the new ordinance before it becomes effective they would still have a revised ordinance with the same provisions

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that they are against. Any petition would have to challenge the new ordinance within 90 days of its enactment and if that were to occur the CC could rescind its repeal of the current ordinance. The result is that the "anti-zoning people" would still get what they do <<...>> <<...>> n't want. In addition, trying to get 2 petitions and two successful votes against Zoning seems to be impossible."

Mr. Reynolds moved to adjourn the meeting at 9:15 PM. Mr. Dunleavy seconded the motion, which carried unanimously. A detailed transcript of this meeting may be found on CD #\_\_\_\_. These minutes were prepared by Shannon Hayden.