

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
AUGUST 12, 2008

The Jefferson County Planning Commission met on Tuesday, August 12, 2008, with Commission members Robert Reynolds, President; Arnold Dailey, Vice President; Lynne Deming, Secretary; Ellen May; Jim Surkamp; John Sidor; Tom Kane; Edward Dunleavy and John Maxey present. Staff members present included Tony Redman, Director of Planning; Sherry Kelly, Deputy Director of Planning; Damien Davis, County Engineer and Jennilee Hartman, Administrative Assistant.

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

1. Approval of Minutes. Mr. Sidor moved to approve the minutes of the July 22, 2008 Planning Commission meeting with the following changes recommended by Commission members:
 - a. Page 1, Item #3, fifth sentence from the bottom, remove the word “*should.*”
 - b. Page 1, Item #3, fifth sentence from the bottom, change the word “*be*” to “*is.*”
 - c. Page 3, Item #5, second paragraph, fifteenth line down, change the words “*Post Master*” to “*Postmaster.*”
 - d. Page 4, correct the numbering of Item #9 and the subsequent numbering of the agenda.
 - e. Page 5, move Item #10 to page four.
 - f. Page 5, Item #13, change the vote from “6 for and 2 abstentions” to “7 for and 2 abstentions”
 - g. Page 5, Item #13, remove the last sentence which states, “Mr. Maxey failed to vote.”

Mr. Kane seconded the motion, which carried unanimously.

2. Citizen Communication. Mr. Reynolds introduced this new agenda item. He explained that the purpose of the item was to provide an opportunity for any member of the public who wished to speak to the Planning Commission on an item not on the current agenda but that was related to planning or zoning topics. This item will appear on all future agendas. Mr. Reynolds asked if any members of the public wished to speak. There were no comments from the public.
3. Requests for postponement. Pertaining to the Community Impact Statement for the Wild Goose Subdivision, Mr. Redman stated that due to some last minute issues, he had suggested that the applicant postpone the public hearing until the August 26, 2008 Planning Commission meeting. Michael Shepp with Dewberry was present and concurred with Mr. Redman. It was the consensus of the Planning Commission that the Community Impact Statement review for the Wild Goose Subdivision be postponed until the August 26, 2008 Planning Commission meeting.

4. Final Plat Public Hearing for the Howard F. Simons Minor Subdivision, Lots 1, 2 & 3-Residue. Ms. Kelly and Mr. Davis recommended approval of the final plat. Mr. Dunleavy questioned the use of the term “pro rata” in Note #18. Mike Shepp with Dewberry was present to answer Planning Commissioners’ questions. Mr. Dunleavy asked that Note #18 be revised to state that the “pro rata” statement clarify that road maintenance cost will be shared equally by each lot owner. Mr. Maxey asked staff to obtain a formal response letter from the Health Department regarding their stance on septic reserve fields being located in the flood plain. Mr. Davis and Mr. Redman agreed to look into it. Mr. Reynolds opened the public hearing. There were no comments from the public. The public hearing was closed. Mr. Dunleavy moved to approve the final plat contingent upon Note #18 being revised. Mr. Dailey seconded the motion, which carried unanimously.
5. Community Impact Statement Hearing for the Wild Goose Farms Subdivision. This item was postponed until the August 26, 2008 Planning Commission meeting. (See Item #3)
6. Request by PNGI – Charles Town Gaming for a variance to waive the site plan requirements for a 2,154 sq. ft. kitchen. The existing kitchen is to be demolished and replaced with the new kitchen. Ms. Kelly deferred to the County Engineer for recommendation. Mr. Davis stated that the applicant would be required to obtain a demolition permit for the existing facility and that a new building permit must be obtained prior to the construction of the new facility. Mr. Kepler agreed to do so. Mr. Davis also stated that since the applicant was not proposing to change uses and the addition square footage of the new facility was less than 250 square feet, he recommended granting the variance. Mr. Kane asked that the site plan for the maintenance building that was approved at the July 22, 2008 Planning Commission meeting be changed to reflect the enlarged kitchen facility. Randy Kepler with Greenway Engineering was present to answer Planning Commissioners’ questions. Mr. Reynolds opened the public hearing. There were no comments from the public. Mr. Reynolds noted the Planning Commission as being in receipt of a comment letter from Mr. Gil Garcia. Mr. Surkamp moved to grant the variance to waive the site plan requirements for a 2,154 sq. ft. kitchen. Ms. Deming seconded the motion, which carried unanimously.
7. Request by SPARC, LLC for a variance to re-open the subdivision and for a 6-month extension to bond and record the final plat for the SPARC Training Campus Subdivision (PC File #07-14). Ms. Kelly stated the request was not contrary to public interest and the project had received all necessary approvals. If the variance was denied, the applicant would have to begin the process again starting with the Community Impact Statement. This would create an unnecessary hardship. Therefore, Ms. Kelly recommended granting the variance. Mr. Davis deferred to the County Planner. Kristin Ringstaff with W.H. Gordon Associates was present to answer Planning Commissioners’ questions. Mr. Dunleavy moved to re-open the subdivision file and to grant the applicant a 6-month extension to bond and record the final plat. Ms. Deming seconded the motion, which passed 8 for and 1 abstention (Mr. Maxey).

8. Review of Staff Response to Public Comment received in response to Public Hearing. The Planning Commission questioned staff regarding the Staff Response to Public Comments Received and Summary of Staff Recommended Changes to the Zoning Ordinance and Zoning Map handouts. Mr. Redman addressed each question of the Commissioners'.

Mr. Dunleavy moved to accept the Summary of the Comments Received on July 16, 2008, pertaining to the draft Zoning Ordinance and draft Zoning Map and the Recommended Responses by the Planning Department staff dated August 4, 2008. Ms. May seconded the motion, which passed 7 for and 1 opposed (Mr. Sidor).

9. Carried over from the July 22, 2008 Planning Commission meeting. Deliberation and possible action regarding draft Zoning Ordinance and Zoning Map.

Mr. Dunleavy moved to adopt the Planning Commission's Report on the Findings concerning the consistency of the proposed County Zoning Ordinance with the Jefferson County Comprehensive Plan dated July 1, 2008. Mr. Maxey seconded the motion, which carried unanimously.

The Planning Commission discussed the suggested changes to the draft Zoning Ordinance. Mr. Reynolds stated that any changes needed in the future could be accomplished by amending the Zoning Ordinance. In response to questions from the Commission, Mr. Casimiro advised the Planning Commission to make any necessary changes now in order to avoid confusion at a later time.

10. Review of draft Zoning Ordinance and Zoning Map Resolution.

Mr. Dunleavy requested that the Zoning and Subdivision Resolutions be written to reflect direct quotes from the West Virginia State Code and include minor grammar edits.

Mr. Maxey moved to approve the Resolution to Recommend Adoption of the Proposed Jefferson County Zoning Ordinance document draft dated June 16, 2008, with amendments, and proposed Zoning Map, dated May 5, 2008, along with further amendments dated August 5, 2008 and minor edits. Mr. Sidor seconded the motion, which carried unanimously.

11. Carried over from the July 22, 2008 Planning Commission meeting. Deliberation and possible action regarding draft Subdivision Regulations. Mr. Redman presented Staff Recommended Changes to the Commissioners' for their consideration.

Mr. Kane moved to adopt the draft Subdivision Regulations dated May 15, 2008, as amended on August 12, 2008. Mr. Dunleavy seconded the motion, which carried unanimously.

12. Review of draft Subdivision Regulations Resolution.

Mr. Reynolds called for a break at 8:23 PM in order to change the CD. The meeting resumed at 8:28 PM.

Mr. Kane moved to approve the Resolution to Recommend Adoption of the Proposed Jefferson County Subdivision and Land Development Regulations draft dated May 15, 2008, and amended on August 12, 2008. Mr. Sidor seconded the motion, which carried unanimously.

13. Director's Report on office activities, questions and future planning initiatives. Mr. Redman stated that since the Resolutions were approved by the Planning Commission, he would bring the Resolutions and the amendments before the County Commission at their next meeting. Mr. Redman mentioned two planning studies he hoped to begin in the upcoming year. The Planning Commission and Mr. Redman had detailed conversation regarding the studies. No formal action was taken.
14. President's Report. Mr. Reynolds informed the Commissioners that the County Commission had not yet come to any conclusion regarding staff salary increases.

Mr. Reynolds also stated that he wished to change the order of how the Planning Commission, Staff and the applicant speak on specific agenda topics. Staff recommendations would be considered after the applicant's presentation under the new approach. The Commission supported the change by unanimous consent.

Mr. Reynolds mentioned that he would like to schedule a workshop during a regularly scheduled Planning Commission meeting to discuss the Kaufman case. Mr. Surkamp asked that the Wolfe vs. Forbes case be added to that same workshop. Mr. Casimiro stated he would work on a presentation.

15. Planning Commission Exchange. Mr. Dunleavy stated he would like staff to revisit the wording of the legal ads that are advertised in the Spirit of Jefferson and make recommendations regarding appropriate changes. Staff agreed to do so. Mr. Sidor asked that any time an item from the agenda is to be postponed that a reason be stated.
16. Discussion and action on the court order granting approval of Faraway Farms conditional use permit pursuant to West Virginia court and remanding to the Planning Commission. (PC File #AP04-05). Mr. Dunleavy and Mr. Surkamp recused themselves and left the meeting room. Mr. Kane moved to go into executive session to discuss legal options of the Planning Commission. Mr. Sidor seconded the motion, which carried unanimously with 2 recusals (Mr. Dunleavy and Mr. Surkamp).

The Planning Commission went into executive session at 9:00 PM and returned to public session at 10:00 PM.

Mr. Sidor moved that the Planning Commission pursue legal action to challenge the Supreme Court's ruling as discussed in the executive session. Mr. Maxey seconded the motion, which carried unanimously with 2 recusals (Mr. Dunleavy and Mr. Surkamp).

Ms. Deming moved to grant the Conditional Use Permit for Far Away Farm, LLC in accordance with the Supreme Court mandate and under legal duress, while not intending to waive our rights to challenge the Supreme Court's ruling and reserve the right to rescind the CUP upon a Court Order permitting the same. Ms. May seconded the motion, which carried unanimously with 2 recusals (Mr. Dunleavy and Mr. Surkamp).

Mr. Maxey moved that the Planning Commission appoint a member to appear at the next public session of the Jefferson County Commission to express its discontent with the legal situation the Planning Commissioner find themselves in as a result of the recent Supreme Court decision on the Far Away Farms case and the written memorandum received from the Prosecuting Attorney's Office at its last meeting. Ms. May seconded the motion, which passed 5 for and 2 opposed (Mr. Dailey and Mr. Reynolds)

Ms. May moved to appoint Mr. Maxey to appear before the County Commission. Ms. Deming seconded the motion. Mr. Maxey accepted the appointment while asking for support from Mr. Reynolds. Mr. Kane stated that Mr. Maxey is to go before the County Commission as a representative of the Planning Commission and not as a citizen of Jefferson County. Mr. Reynolds called for the vote which passed 6 for and 1 opposed (Mr. Dailey).

17. Reports from Legal Counsel and legal advice to PC. No further legal action.

18. Actionable Correspondence. None.

Mr. Dunleavy and Mr. Surkamp returned to the meeting room.

Ms. May moved to adjourn the meeting at 10:09 PM. Ms. Deming seconded the motion, which carried unanimously. A detailed transcript of this meeting may be found on CDs #90 & 91. These minutes were prepared by Jennilee Hartman.