

DRAFT MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
OCTOBER 28, 2008

The Jefferson County Planning Commission met on Tuesday, October 28, 2008, with the following Commission members present: Arnold Daily, Vice President; Lynne Deming, Secretary; Jim Surkamp; Tom Kane; Edward Dunleavy and John Maxey. Staff members present included Kirk Davis, Acting Director of Planning; Tom Hall, Planner/Landscape Architect and Rebecca Burns, Bonding Administrator and Shannon Hayden, Planning Clerk.

Robert Reynolds and John Sidor were absent with notification.

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

1. Approval of the minutes. Mr. Kane abstained from commenting or voting on the minutes because he was not present at the October 14, 2008 Planning Commission meeting. Mr. Maxey moved to approve the minutes of the October 14, 2008 Planning Commission meeting with the following changes recommended by Commission members:
 - a) Page 1, first sentence, change “*with Commission members:*” to “*with the following Commission members present.*”
 - b) Page 1, second sentence, change “*Demining*” to “*Deming.*”
 - c) Page 2, second paragraph, third line, change “8” to “6.”
 - d) Page 2, fourth paragraph, second line, insert “*not*” between the words “*were*” and “*expected.*”
 - e) Page 4, Item #11, sixth line, change “*o*” to “*of.*”
 - f) Page 4, Item #13a, change “*shortcut*” to “*shortfall.*”
 - g) Page 5, seventh line, replace with “*Ms. Deming also stated certain issues were discussed in executive session.*”
 - h) Page 5, ninth line, change “*if*” to “*of.*”
 - i) Page 5, Item #13, last paragraph, delete last sentence and replace with “*Mr. Dunleavy asked the Planning Commission to consider that if an applicant had been granted one extension and the Planning Commission voted to not grant another extension would the applicant be required to start the process again under the new Zoning Ordinance. Mr. Casimiro stated that the applicant would be required to begin the process again under the new Zoning Ordinance.*”
 - j) Page 5, last paragraph, change adjourn time from “9:46 PM” to “10:39 PM.”

Ms. May seconded the motion, which carried 6 for, 0 against and 1 abstention.
(Mr. Kane)

2. Citizen Communication. Mr. Dailey asked if any members of the public wished to speak. There were none.
3. Postponements. There were no requests for postponement.

4. Postponed from the October 14, 2008 Planning Commission meeting. Community Impact Statement (CIS) Hearing for the Shady Grove Center. Mr. Hall read from his staff report a brief history of the Shady Grove Center project. Ms. Burns read from Roger Goodwin, Chief County Engineer's report and stated all the information required for the CIS appeared complete. Betsy Michael, Bob Denton and Michael Myers with Terra Development were present to answer Planning Commissioners' questions. Ms. Michael gave a comprehensive plan summary. Ms. Deming asked if the current capacity of storage facilities was known. Ms. Michael stated that in the Ranson area there was one facility and it already reached its occupancy and capacity. Mr. Dunleavy expressed concern that in Appendix A of the CIS there was no requirement that the facility be part of the Home Owners Association. Ms. Michael stated that a provision would be added to the CIS and noted on the recordable deeds. Ms. Deming asked if fire protection had been established. Ms. Michael referred to letters that were sent requesting fire protection services, and stated there was no response to date. Mr. Dailey opened the public hearing. There was no comment from the public. Mr. Dailey closed the public hearing. Mr. Hall and Mr. Goodwin recommended granting the CIS. Mr. Dunleavy moved to accept the CIS. Ms. May seconded the motion, which carried 7 for and 0 opposed.
5. Request by Darlene Cross for a variance to lift the parent to child restriction to process a minor subdivision; to waive the requirement to upgrade the road to a county standards in order to add an additional lot; and to advance to final plat stage. Mr. Hall read from his staff report a brief history of the variance request. Ms. Burns read from Roger Goodwin, Chief County Engineer's report. Darlene Cross was present to answer Planning Commissioners' questions and gave a brief summary of her request. Christopher Cross, Ms. Cross' son and adjacent property owner was also present and gave a statement to the Planning Commission in favor of Ms. Cross' variance request. Ms. Burns stated that Ms. Cross' property was part of a transfer from her father to several of his children all at one time. Ms. Cross' sister Ms. Clipp was the first of the children to process through the Department of Planning and Zoning and was therefore given the residue parcel designation for her piece of property permitting her to subdivide. Ms. Cross stated that she visited the Department of Planning and Zoning prior to Ms. Clipp but was afforded no assistance by staff. Mr. Hall and Mr. Goodwin recommended denial of the variance based on the property being previously subdivided and the roads not being up to county standard. Mr. Dunleavy moved to deny the variance request. Ms. Deming seconded the motion, which carried 4 for and 3 opposed. (Mr. Kane, Mr. Surkamp and Ms. May)
6. Request by Melbe Staley, c/o Charles B. Howard, Esquire, for a variance to allow the parent to child lot to be created without an as-built survey. Charles Howard was present to answer Planning Commissioners' questions. Mr. Howard gave an explanation of the variance request and handed out an Amendment to the Notes of Whisper Knoll Subdivision to the Planning Commission that would be submitted in the case that the variance was denied.

Mr. Dailey called for a break at 8:18 PM in order to change the CD. Mr. Dailey called the meeting back to order at 8:20 PM.

Mr. Howard stated the original intention when the subdivision was created was to access lot 9 via the Staley Drive cul-de-sac next to lot 8. Mr. Howard also told the Planning Commission that he spoke with the owner of lot 8, Angie Johnson, who agreed that it was her understanding when she purchased lot 8 that this access would be created at a later date. Mr. Howard asked that Note #2 be changed on the plat to not exclude lot 9. Since both variances were being discussed simultaneously, Mr. Kane asked that both be considered at the same time. Mr. Dailey asked Staff for their report on Item #7, the second Staley variance request. Mr. Hall read a brief history from his staff report and recommended granting the variances. Ms. Burns read from Roger Goodwin, Chief County Engineer's report, which recommended denying this variance request and deferred to the County Planner on the second variance request. Mr. Howard stated that lot 9 will be part of the Home Owners Association (HOA) and be involved in the maintenance of the road. Mr. Dailey opened the public hearing. There was no comment from the public. Mr. Dailey closed the public hearing. Ms. Burns stated that Note #2 on the plat would have required a variance and there is none on file. Ms. Deming moved to approve the variance to allow the parent to child lot be created without an as-built survey. Mr. Kane seconded the motion, which carried 7 for and 0 opposed.

Mr. Dunleavy moved to approve the variance to allow the parent to child lot access directly onto Staley Drive. Mr. Kane seconded the motion with a friendly amendment that this also authorizes the change to note #2 to accept lot 9. Mr. Dunleavy accepted the friendly amendment and the motion carried 7 for and 0 opposed.

7. Request by Melbe Staley, c/o Charles B. Howard, Esquire, for a variance to allow the parent to child lot to access directly onto Staley Drive. This item was discussed and moved on under Item #6 above.

8. Director's Report.

Mr. Davis informed the Planning Commission that the Planning Department is working on new office procedures to help with office efficiency. Mr. Davis gave an update on the search committee process for finding a new Planning Director.

Mr. Hall presented the Planning Commission with a draft US Route 340 Corridor Gateway Plan for their review.

9. President's Report.

a. Recommendation concerning outside legal counsel.

Ms. May stated that Mr. Reynolds asked her to take the memos related to Faraway Farms to an attorney for review and legal opinion. There was discussion between the Planning Commissioners regarding seeking outside legal advice and/or opinion.

Mr. Maxey moved that the Planning Commission allocate up to \$5,000.00 from the current budget for consulting outside services for the purpose of researching the Faraway Farms Supreme Court Order to the Planning Commission and that the County Commission be advised at Thursday's session that we will be conducting this research and obtaining this advice within the Planning Department current budget and will not be needing the budget revision reserve approved at this time. Mr. Dunleavy recused himself and left the room at 9:31 PM. Mr. Surkamp seconded the motion. There was further discussion on the matter.

Mr. Dailey called for a break at 9:38 PM in order to change the CD. Mr. Dailey called the meeting back to order at 9:40 PM.

Mr. Maxey's motion was brought back to the table and failed 3 for and 3 opposed.
(Ms. Deming, Mr. Dailey and Ms. May)

Mr. Maxey moved to have the Planning Commission members obtain written quotes from attorneys willing to provide us research and written advice regarding the Faraway Farms Supreme Court Order and then present it at the next meeting. Mr. Surkamp seconded the motion. Mr. Kane offered a friendly amendment to have the attorney be a member of the West Virginia Bar; have experience practicing in West Virginia, especially with constitutional issues and be located outside the Panhandle. Mr. Maxey and Mr. Surkamp accepted the friendly amendment. The motion carried 4 for and 2 opposed. (Ms. May and Mr. Dailey)

Mr. Dunleavy returned to the room at 9:51 PM.

10. Planning Commission Exchange.

- a. Review and schedule public hearing to reinstate amendments made to Article 6 & 7 in the county Ordinance, as voted by the County Commission and became effective in April 2005.

Mr Surkamp moved to follow procedure to reinstate the changes made in Article 6 & 7 in the County Ordinance, as voted by the County Commission. Ms. May seconded the motion. Mr. Kane pointed out that the new Ordinance was in place, therefore changes to the old Ordinance would not apply. Mr. Maxey asked Mr. Casimiro if there was any legal barrier to amending the old Ordinance. Mr. Casimiro stated if the old Ordinance were in effect, amendments could be made. Mr. Surkamp withdrew his motion.

- b. Legal Counsel Search.

This item was discussed under Item #8.

- c. Motion to retain legal services for advice regarding the West Virginia State Supreme Court Order on the Faraway Farms Condition Use Permit (CUP).

This item was discussed under Item #9.

- d. Discussion regarding Rattling Springs and making information more available to the public.

Mr. Maxey stated that he wanted to wait to discuss this matter.

Ms. May asked Mr. Davis if Ms. Kelly had made any progress in scheduling meetings with the Public Service District. Mr. Davis informed the Planning Commission that he would follow up on this matter and that the Planning Commission should direct all of their inquiries regarding the department to him in the future via email at planningdepartment@jeffersoncountywv.org.

Mr. Hall informed the Planning Commission that he, Mason Carter, Code Enforcement Officer and Tony Redman, then Director had a meeting with Mr. Mazaris to discuss a tree cutting issue. Mr. Mazaris was in agreement to refrain from cutting and would create an equal preservation area to mitigate for the cutting that had already taken place. Ms. May informed Mr. Hall that in her opinion Mr. Mazaris had done even more cutting and built a small house at the river's edge since Mr. Carter had completed his investigation. Mr. Davis stated that he would follow-up on the matter.

11. Reports from Legal Counsel and legal advice to PC. Mr. Dailey stated that he was made aware the Shenandoah School was operating from the residence again. Mr. Casimiro stated that he had also heard they were operating from the same location as Mr. Dailey stated and that this would be in violation of the court settlement.

Mr. Casimiro asked the Planning Commission if they would like to discuss the Kaufman case or wait until Mr. Reynolds was present. The Planning Commission members were in agreement to wait. Mr. Maxey moved to table this discussion until Mr. Reynolds was present. Mr. Dunleavy seconded the motion, which carried 7 for and 0 opposed.

12. Actionable Correspondence. None.

Ms. May moved to adjourn at 10:19 PM. Mr. Maxey seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CDs #117, #118 & #119. These minutes were prepared by Shannon Hayden.