

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
FEBRUARY 27, 2007

The Jefferson County Planning Commission met on Tuesday, February 27, 2007 with Paul Burke, President presiding. John Sidor, Todd Baldau, Russell Roper, Arnie Dailey, Tom Kane, Lynne Deming and Jim Surkamp were present. Staff members present were Sherry Kelly, Kim Shrader and Jennilee Hartman.

Ellen May was absent because she was traveling.

Mr. Burke called the meeting to order at 7:01 p.m.

1. Mr. Baldau motioned to approve the January 23, 2007 minutes with the following changes as outlined in Mr. Baldau's and Mr. Burke's handouts (see attached):

- 1) Page 1, after 5th paragraph, add another paragraph stating, "*Mr. Baldau stated that he would have to temporarily leave the Planning Commission meeting at 7:15 pm to participate in a conference call regarding an issue in his day job. Mr. Baldau stated he would return to the meeting as soon as his call was finished.*"
- 2) Page 1, Item # 3, the last two sentences, replace "*naming the*" with "*giving*"; and, add after the word Watson "*an address on that*"; and, on the last sentence replace "*Mr. Burke*" with "*Mr. Sidor*".
- 3) Page 1, Item # 4, add after third sentence, "*Mr. Baldau returned to the room after this item started, so he did not participate.*"; and, beginning with the first condition of approval, change "*1'*" to "*15'*" and the word "*show*" with "*shown*".
- 4) Page 2, 4th paragraph down, change the sentence, "*8:25 p.m. Todd Baldau returned to the meeting room for the rest of the meeting.*" to "*8:25 p.m. Todd Baldau returned to his Commission seat for the rest of the meeting.*"
- 5) Page 2, Item # 6, after 4th sentence add, "*The applicant committed to having the Fish & Wildlife Service review the blasting plan.*"
- 6) Page 2, Item # 6, 5th paragraph, second sentence change the word "*them*" to "*the applicant*";
- 7) Page 4, Item # 15, after the sentence, "*Mr. Sidor seconded the motion.*" add the sentence, "*James Casimiro, Assistant Prosecuting Attorney discussed the motion with the Planning Commission. Fred Blackmer and Henry Hass spoke in opposition to the motion.*"; Remove the words, "*See attached.*" at the end of the paragraph; Remove the sentence "*Fred Blackmer and Henry Haas spoke.*"
- 8) Item # 20, at the end of the paragraph add, "*Ms. Deming raised the question of whether the Planning Commission may delegate approval of variance and site plans to committees.*"

Mr. Dailey seconded the motion. Mr. Kane stated since he was not at the January 23, 2007 meeting that he would not be able to vote on the minutes. The motion passed 7 for and 1 abstention (Mr. Kane).

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Mr. Sidor motioned to approve the January 30, 2007 special meeting minutes with the following changes as outlined in Mr. Burke's handout (see attached):

- 1) Page 1, 3rd paragraph, last sentence change the word, "*different*" to "*differently*."
- 2) Page 1, 5th paragraph, add, "*as examples of problems*." after the phrase, '*the following issues*'.
- 3) Under the heading: **Confusing**, #1 replace with word "*with*" to "*of*"; #2 remove the word "*all*"; #3 change "*2.105C*" with "*2.105D*"; #6 change from, "*Ministerial vs. Require, a different lotting pattern, Page 7 under density, last four paragraphs*." to "*Ministerial vs. Require, a different lotting pattern*", *Page 7 paragraph G*."
- 4) Under the heading: **Conflicts with the Law**, #1 change from, "*Someone needs to demonstrate that the process of ordinance*." to "*Someone needs to demonstrate that the process of the ordinance complies with 8A*."; #2 after the word '*recommendation*' add, "*vs. making our independent decisions*." and delete, "*vs. making our independent decisions*." after the phrase '*non-zoning issues*.'; #3, add a period after the word '*services*' and make the lower case "*c*" in conflict to a capital "*C*".
- 5) Under the heading: **Things That Should Be Done Differently**, make the paragraph that begins, "*Mr. Sidor motion the Planning Commission...*" to be itemized as #3.

Ms. Deming seconded the motion, which passed 6 for and 2 abstentions (Mr. Kane and Mr. Baldau since they were not present at this Planning Commission meeting).

2. Requests for postponements. Sarah Kleckner with Resource International requested that Item #17, Site plan approval and issuance for the Improvement Location Permit Windmills Crossing, Lot 1, Medical Office Building be withdrawn because the site had been annexed into the City of Charles Town. Mr. Burke stated it was within the owner's rights to withdraw and therefore a motion was not necessary.

Mr. Kane motioned at 7:06 p.m. to go into executive session stating the reason being Peters vs. Wood County. Mr. Surkamp seconded the motion, which passed 7 for and 1 opposed (Mr. Baldau).

The executive session ended at 7:24 p.m. Ms. Deming motioned to authorize legal counsel to seek to vacate the Joyce Thornton Order and to follow due process and bring it back to the Planning Commission. Mr. Kane seconded the motion, which carried unanimously.

3. Postponed from the 02-13-07 meeting. Final Plat Public Hearing for the Raymond Paxton Minor Subdivision, Lot 2004B and Lot 2004A-Residue. Staff recommended approval of the final plat pending submission of originally signed plats and recordation within 90 days. Mr. Burke asked for public comment. There was none. Gary Frey with Huntley, Nyce and Associates was present to answer Commissioner's questions. Mr. Baldau motioned to approve the final plat with staff contingencies. Mr. Dailey seconded the motion, which carried unanimously.

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4. Final Plat Public Hearing for the Carlos McDaniel Minor Subdivision. Mr. Roper recused himself stating he had contact with the surveyor regarding this matter and left the room. Staff recommended approval of the final plat pending submission of originally signed plats and recordation within 90 days. Mr. Burke asked for public comment. There was none. John Kusner, Surveyor, was present to answer Commissioner's questions. Mr. Dailey motioned to approve the final plat with staff contingencies. Mr. Kane seconded the motion, which passed 7 for and 1 recusal (Mr. Roper). Mr. Roper returned to the meeting room.

5. Final Plat Public Hearing for the Falcon Ridge Subdivision. Staff recommended approval of the final plat pending submission of bonding, originally signed plats and recordation within 90 days. Mr. Burke stated he had a question regarding 80 foot road frontage. Mr. Surkamp stated he is recusing himself because he is unfamiliar with this project. Mr. Surkamp left the room. Mr. Baldau asked if the location of bus shelters was covered anywhere in the Ordinance? Kim Shrader, County Engineer stated there were none. Mr. Burke stated the only mention of the bus shelter is that they be conveniently located. Mr. Burke returned to his original question in stating that the common area did not have 80 feet of road frontage. Sherry Kelly, Planner, stated the common area was not considered a buildable lot and therefore did not require the full 80 feet. Mr. Burke and Ms. Kelly shared views on the matter citing sections of both the Subdivision Ordinance and the Zoning Ordinance. Mr. Dailey and Mr. Sidor questioned where a school bus would pull off to collect children. Nathan Cochran, Attorney, reminded the Commission that Staff had already deemed the final plat approved and that their job was strictly ministerial. Mark Dyck with W.H. Gordon Associates was present to answer Commissioner's questions. Mr. Dyck answered questions regarding the bus shelter, bus pull off and mailbox location. Mr. Burke asked for public comment. There was none. Mr. Kane motioned to approve the final plat with staff contingencies. Mr. Roper seconded the motion. Mr. Baldau stated that although he is voting for the project he is opposed to the State Highway Department's decision regarding the road conditions and believes that the site is a deathtrap. Mr. Sidor shared Mr. Baldau's opinion. The motioned passed 6 for, 1 recusal (Mr. Surkamp) and 1 opposed (Mr. Burke). Mr. Surkamp returned to the meeting room.

6. Postponed from the 02-13-07 meeting. Request by The Marty Mart Group, LLC for a variance to allow two principle uses on one lot. Staff recommended approval of the variance stating it was not contrary to public interest. Paul Sherry with LJS Professional Services was present to answer Commissioner's questions. Mr. Burke had questions regarding septic. Sherry explained the carwash filtration system. Mr. Burke had questions regarding septic. There was none. Mr. Kane motioned to approve the variance. Ms. Deming seconded the motion, which carried unanimously.

7. Postponed from the 02-13-07 meeting. Request by Haynes/Foltz, LLC for a variance to move the location of the access road. This variance was withdrawn by the owner.

8. Postponed from the 02-13-07 meeting. Request by James T. Blue and Sons, Inc., c/o John C. Skinner, Jr., for a variance to allow a parent to child conveyance from the James T. Blue and Sons Corporation of 5.1319 acres. Staff recommended approval of the variance stating it was not contrary to public interest and that similar variance such as this had been approved by the

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Planning Commission in the past. Mr. Skinner was present to answer Commissioner's questions. Mr. Burke asked for public comment. There was none. Mr. Roper motioned to approve the variance. Ms. Deming seconded the motion, which carried unanimously.

9. Postponed from the 02-13-07 meeting. Limited Site plan approval and issuance of the Improvement Location Permit for Sierra Properties. Staff recommended approval of the limited site plan and issuance of the Improvement Location Permit. David Sutherland, property owner, was present to answer Commissioner's questions. Mr. Burke stated Note 10 on the limited site plan needed to be changed to add the word impervious. Mr. Burke asked for public comment. There was none. Mr. Kane motioned to approve the limited site plan and issuance of the Improvement Location Permit subject to staff contingencies and the correction of Note 10. Mr. Sidor seconded the motion, which carried unanimously.

10. Postponed from the 02-13-07 meeting. Limited Site plan approval and issuance for the Improvement Location Permit for Food Lion Expansion. Staff recommended approval of the limited site plan and issuance of the Improvement Location Permit. Mr. Baldau questioned the handicapped parking spaces. Ms. Shrader gave a brief history of the Maddex Square Shopping Center. Lisa McCauley with Dewberry gave an extensive report of the site and explanation of the handicapped parking lot issues. Mike Shepp with Dewberry was also present to answer the Commissioner's questions. Mr. Burke asked for public comment. Rhonda Monroe, citizen, wanted to voice her concerns about handicapped parking spaces because she had a handicap and found it difficult to get from the currently provided space to the Food Lion. Mr. Roper motioned to approve the limited site plan and issuance of the Improvement Location Permit. Ms. Deming seconded the motion.

The CD was changed at 8:42 p.m. and the meeting resumed at 8:45 p.m.

Mr. Kane wanted to state his disappointment in the total lack of disregard of the regulations by Premier Bank. Ms. McCauley stated neither Dewberry nor their client Food Lion had any part in the initial re-striping plan but that Food Lion had agreed to do so simply to get the expansion project underway. Mr. Baldau stated that he would like the limited site plan to be modified so that the handicapped parking spaces were located closer to the entrance of the Food Lion (at the end of aisle #3 or aisle #4), rather than at the end of aisle #6." The motion passed with 5 for and 3 opposed (Mr. Baldau, Mr. Burke and Mr. Sidor).

11. Postponed from the 02-13-07 meeting. Actionable Correspondence.

- (a) Email from Matthew R. Powell with Potomac Professional Services, LLC, on behalf of Greenbriar Investments LLC, concerning Beacon Hill Estates, Section II. Ms. Kelly stated she believed the request was simply to ask whether or not the Planning Commission wanted to see the Hillside and Forest Management Plans. Ms. Kelly also questioned for future reference whether or not the Planning Commission wants to see these types of plans. They stated they did. Jason Azaar with Huron Consulting and Trish Sanderson with Greenbriar Investments were present to represent the request. Mr. Baldau motioned to have both plans to be included in their packets for the next meeting. Mr. Dailey seconded the motion. Mr. Sidor asked if this would stall the developer. It

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was stated that it would put the developer out another two weeks. The motion passed 6 for and 2 opposed (Mr. Roper and Ms. Deming).

- (b) Letter from Glenn H. Wasson regarding handicapped parking places in front of the Food Lion, Maddex Square Shopping Center. This letter was addressed during Item #10.

12. Request by Jason C. Mills and Jayme L. Mills for a variance from upgrading a 50 ft. right-of-way. Staff recommended approval of the variance stating it was not contrary to public interest. Jayme Mills was present to answer the Commissioner's questions. Mr. Burke asked for public comment. There was none. Mr. Kane motioned to approve the variance. Mr. Dailey seconded the motion, which carried unanimously.

13. Request by Kentland Foundation to allow an upgrade to a new structure under the existing multi use variance for the Cone Zone; and, to waive the site plan for the proposed new structure. Ms. Kelly stated she was OK with the variance but deferred to Ms. Shrader for engineering matters. Ms. Shrader recommended approval of the variance contingent upon providing a traffic flow, (vehicular and pedestrian), parking layout and obtaining all required permits. Dave Williams was present to answer Commissioner's questions. Mr. Sidor motioned to approve the upgrade of the structure and to waive the site plan requirements with staff contingencies. Mr. Roper seconded the motion, which carried unanimously.

14. Request by Seneca Crossing, LLC for a variance to allow a six month extension of time to bond and record the final plat for Seneca Crossing South Subdivision until October 09, 2007. Staff recommended approval of the variance. Eric Lewis was present to answer the Commissioner's questions. Mr. Burke asked for public comment. There was none. Mr. Kane motioned to approve the variance. Mr. Roper seconded the motion, which passed with a vote 7 for and 1 opposed (Mr. Burke).

15. Request by Jason A. Marrone for a variance from upgrading an existing 50 ft. right-of-way to a county grade road (for a Child to Parent Deed). Staff recommended approval of the variance contingent upon the applicant submitting an updated highway entrance permit. Jason Marrone was present to answer the Commissioner's questions. Mr. Burke asked for public comment. There was none. Mr. Kane motioned to approve the variance. Mr. Roper seconded the motion which carried unanimously.

16. Request by DiGennero Electrical Contractors, Inc. for a variance to waive the limited site plan for an existing 504 sq. ft. storage shed. Staff recommended approval of the variance contingent upon the structure meeting all required setbacks and issuance of an improvement location permit. Christopher Waddell with Greenway Engineering was present to answer Commissioner's questions. Mr. Burke requested that the vicinity map be made more accurate. Tara Vaughn with DiGenerro was also present to answer Commissioner's questions. Mr. Dailey motioned to approve the variance. Mr. Roper seconded the motion which carried unanimously.

17. Continued from the 01-09-07 meeting. Site plan approval and issuance for the Improvement Location Permit for Windmill Crossing, Lot 1, Medical Office Building. This item was withdrawn under Item #2.

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18. Continued from the 11-28-06 meeting. To set a Public Hearing date for Rezoning Petition for Last Chance Used Cars. Discussion took place regarding the Petition and advertising requirements. Mr. Baldau motioned to schedule the public hearing for March 27, 2007 with advertising being at least 15 days prior to the meeting. Ms. Deming seconded the motion which carried unanimously.

19. Postponed from the 02-13-07 meeting. Planning Commission Budget. Mr. Burke presented a handout to the Commissioners (see attached).

20. Postponed from the 02-13-07 meeting. Subdivision Processing Fees. Mr. Sidor presented fee schedules from surrounding counties. Mr. Baldau motioned to ask the County Commission if they want the Planning Commission to make a recommendation to adjust the subdivision review fees so as to bring the Planning Commission revenue more in line with Planning Commission expenses. Mr. Surkamp seconded the motion, which carried unanimously. Mr. Baldau requested this item be placed on the March 13, 2007 regular Planning Commission meeting agenda.

Discussion between the Commissioners and James Casimiro, Assistant Prosecuting Attorney, took place and it was decided that Mr. Casimiro's name be removed from the "Professional Services" row. Mr. Baldau motioned to submit Mr. Burke's handout as the Planning Commission's budget in the amount of \$948,000. Mr. Baldau withdrew the motion. Mr. Baldau motioned to submit Mr. Burke's proposed budget amount of \$948,000 excluding the itemized list. Mr. Sidor seconded the motioned. Mr. Surkamp requested the motion be amended to reflect an additional \$50,000 for both software needs and a new IT employee, whether part or full time. The motion was amended.

The CD was changed at 10:15 p.m. and the meeting reconvened at 10:18 p.m.

Discussion regarding Mr. Burke's proposed budget continued. Mr. Baldau's motion to submit a budget amount of \$998,000 to the County Commission was seconded by Mr. Sidor. The motion passed 7 for and 1 opposed (Mr. Kane).

Mr. Baldau requested Item # 28 be addressed at this time. Mr. Burke continued with the agenda since the following items were short in nature.

21. Postponed from the 02-13-07 meeting. Spreadsheet of Past and Pending Projects. Mr. Burke referred to a memo that Mr. Paul Raco, Executive Director, provided in which Mr. Raco stated the office could update the current office subdivision list by the next regularly scheduled meeting. No motion was taken during this item.

22. Postponed from the 02-13-07 meeting. Draft ordinance revisions. No action was taken.

23. Postponed from the 02-13-07 meeting. Mailings to Planning Commission. Mr. Burke stated this item could be removed from the agenda.

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24. Postponed from the 02-13-07 meeting and continued from the 01-23-07 meeting. Approved Annual Reports. Mr. Burke stated he was waiting for Mr. Raco to get back to him regarding some issues.

25. Postponed from the 02-13-07 and 01-23-07 meetings. Appointment times for major agenda items. Mr. Burke stated it was too late in the evening to discuss this item.

26. Committees and committee reports:

Executive Committee: No action was taken.

Long Range Planner: No action was taken.

TDR: No action was taken.

Bylaws and Procedures Committee: No action was taken.

PSD Committee and Budget Committee: No action was taken.

27. Non-actionable Correspondence. No one was able to attend the Berkeley County training.

28. Postponed from the 02-13-07 meeting. Request by A. W. Dailey, Jr. for reconsideration of the motion by Todd Baldau concerning staff meetings with applicant and applications. Mr. Burke ruled the request out of order because any reconsideration of a motion must be done at the time the motion is made. Mr. Burke stated this item would be addressed under Legal Issues. Mr. Baldau motioned to amend the policy enacted at the last meeting which was, "The Planning Commission directs the Department of Planning, Zoning & Engineering staff to meet with applicants, or provide feedback or comments on subdivision applications only during those instances expressly specified in the Subdivision Ordinance: 6.1.a.4, 6.1.a.7, 6.1.a.12, 6.1.a.13 and 6.1.a.16." to amend it to, "The Planning Commission directs the Department of Planning, Zoning & Engineering staff to meet with applicants for new subdivision applications only during those instances expressly specified in the Subdivision Ordinance: 6.1.a.4, 6.1.a.7, 6.1.a.12, 6.1.a.13 and 6.1.a.16." Mr. Dailey seconded the motioned for discussion purposes.

Mr. Surkamp stated there might be times in which an emergency meeting must be set up with applicant in order to clear up certain questions. Mr. Casimiro stated he did not have a problem with the amendment although he believed that comments or feedback should not be limited from the Department of Planning, Zoning & Engineering staff. Mr. Casimiro did believe that meetings with applicants could be limited to those set forth in the Ordinance. Mark Dyck with W.H. Gordon Associates asked if the Planning Commission would hear public comment on this matter. The Commissioner's agreed.

Mr. Dyck stated instances where the applicant needed to meet with staff outside those set forth in the Ordinance. Ms. Deming questioned why it was up to the Planning Commission whether staff wanted to meet with applicants or not. Mike Shepp with Dewberry asked why fix something that isn't broken. Mr. Shepp also stated that there is nothing in the Ordinance now that compels staff to meet with applicants outside the prescribed meetings. Henry Hass with Hass Consultants approached the Commission as well.

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Mr. Surkamp requested to amend the motion to have the Planning Commission seek to confine conversations to those given meetings and to explore solutions to the problem in general that include hiring more staff, periodic orientations and use of the web, etc. Motion dies for a lack of a second.

Mr. Baldau's original motioned died for a lack of a majority vote 4 for and 4 opposed (Ms. Deming, Mr. Dailey, Mr. Roper and Mr. Kane). Mr. Dailey motioned to rescind the policy adopted at the January 23, 2007 meeting and get staff input on what would be a workable situation for them, with the development community and to get the Planning Commission out of legal quandary with the their attorney and to have this issue brought back before them at the March 27, 2007 meeting. Mr. Kane seconded the motion, which passed 6 for and 2 opposed (Mr. Baldau and Mr. Burke).

29. Staff interactions with applicants, public & Planning Commission. No action taken.

30. Postponed from the 02-13-07 meeting. Legal representation, advice and possible action. Some or all the discussion may be closed to the public. Any decisions will be made in open session. Topics may include but are not limited to:

*Although not listed Mr. Casimiro addressed the copyright issue by stating the Department of Planning, Zoning & Engineering is not in violation of any copyright laws. Mr. Burke stated he wanted to see something to that effect.

* Although not listed Mr. Casimiro stated he didn't do anything with the Bylaws and if the Planning Commission wanted him to he would.

- 24-hour drainage of storm water: Mr. Casimiro stated his legal interpretation of the Ordinance is that the storm water must be released within the 24 timeframe. Ms. Shrader asked if Mr. Casimiro had an engineering degree and he stated he did not. Mr. Casimiro stated he was to look at it from the legal standpoint not engineering.
- Enforcement authority after bond is released: Mr. Casimiro stated such authority did exist within our Ordinance (Section 16.1) and 8A (2.11.sub.12).
- Authority to delegate to committees: Mr. Casimiro advised the Planning Commission to consult with the attorneys for each subcommittee they want to establish. A committee cannot be established for variances or final plats.
- Policies on agenda and electronic CIS: Mr. Casimiro submitted a draft copy of a CIS policy to discuss at a later time.

Mr. Roper motioned to adjourn the meeting. Mr. Dailey seconded the motion, which carried unanimously.

The meeting adjourned at 11:11 p.m. on February 27, 2007. A detailed transcript of this meeting can be found on CD #. These minutes were prepared by Jennilee Hartman.