

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
MAY 8, 2007

The Jefferson County Planning Commission met on Tuesday, May 8, 2007 with John Sidor, Vice President, as Chair. Tom Kane, Lynne Deming, Robert Reynolds, Todd Baldau, Ellen May, Jim Surkamp, Edward Dunleavy were present. Staff members present were Sherry Kelly, Roger Goodwin and Jennilee Hartman.

Arnie Dailey was absent with notification.

Mr. Sidor called the meeting to order at 7:00 p.m.

1. Minutes. Mr. Baldau motioned to approve the minutes of the April 24, 2007 with the following changes (see attached):

- (1) Item # 1. Minutes: Mr. Baldau motioned to approve the March 27, 2007 minutes. Ms. May seconded the motion, which passed with a vote of 5 **in favor** ~~for~~. Ms. Deming and Mr. Kane did not vote, as they were not present for the March 27, 2007 meeting.

~~Mr. Baldau stated he was not present for the April 10, 2007 meeting.~~ Mr. Kane motioned to approve the April 10, 2007 minutes with the following correction: Page 2, Item #3 change from Ms. Deming to Ms. May. Ms. Deming seconded the motion which passed with a vote of 6 **in favor** ~~for~~. **Mr. Baldau stated he was not present for the April 10, 2007, so he did not vote. Mr. Baldau did not vote.**

- (2) Item # 16 Discussion with legal counsel. Assistant Prosecuting James Casimiro stated if something is pending and takes place outside forum it is ex parte. **(add space)**

Mr. Casimiro **addressed** ~~stated the previous meeting's~~ Sunnyside vote denied/question **about the project's** variance. **Mr. Casimiro said the Planning Commission may** ~~Body~~ can reconsider a **vote** one time **reconsideration** as long as **there is** no new evidence **presented**.

Mr. Casimiro presented a 60 day waiver agreement form. Mr. Casimiro stated that if the applicant asks for a postponement **that** the applicant should sign the 60 day waiver agreement. Mr. Casimiro further stated that the **60 day** clock starts ~~with~~ **when** final plat and supporting materials **are submitted** ~~submission~~ to the office.

Mr. Sidor stated that he believes the Planning Commission agreed to have the 60 day expiration date on the agenda when there is a final plat public hearing.

Mr. Baldau motioned that the Planning Commission direct staff whenever ~~the an~~ applicant wishes to waive the 60 day provision that the applicant sign a copy of the 60 day waiver agreement form including the date. Mr. Dailey seconded the motion which carried unanimously.

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Mr. Kane seconded the motion, which passed 6 for and 2 abstentions, Mr. Reynolds and Mr. Dunleavy as they were not present at the last meeting.

Mr. Sidor stated he had spoken to Ms. DeFazio and she was amicable to having the Planning Commission consider Item # 8 after Item # 11. The Commission agreed.

2. Requests for postponements. None.

3. Final Plat Public Hearing for the Donald C. and Shirley M. Kinley Minor Subdivision, 1 single family lot of 4.6452 acres and 1 single family residue lot of 46.87 acres. Staff recommended approval of the final plat pending submission of originally signed plats and recordation within 90 days. Mr. Sidor opened the public hearing. There was no public comment. The public hearing was closed. Fred Gates was present to answer Commissioner's questions. Mr. Baldau motioned to approve the final plat with staff contingencies. Mr. Kane seconded the motion, which carried unanimously.

4. Final Plat Public Hearing for the James Boyer Minor Subdivision, 2 single family lots on 5.19 acres and 1 single family residue lot on 8.761 acres. Staff recommended approval of the final plat pending submission of originally signed plats and recordation within 90 days. Mr. Sidor opened the public hearing. There was no public comment. The public hearing was closed. Mr. Reynolds motioned to approve the final plat with staff contingencies. Mr. Kane seconded the motion, which carried unanimously.

5. Final Plat Public Hearing for the Michael Wilson Subdivision, 2 single family lots on 18.32 acres and 1 single family residue lot on 22.276 acres. Staff recommended approval of the final plat pending submission of originally signed plats and recordation within 90 days. Ms. Sherry Kelly, Acting Chief Planner/Zoning Administrator, stated Michael & Alla Wilson requested variances on September 12, 2006 to allow 2 additional lots to use Amnesty Way; from the right-of-way width; and from upgrading the existing road to county grade standards. The Planning Commission approved the variances. Mike Shepp with Dewberry was present to answer Commissioner's questions. Mr. Sidor opened the public hearing. George Whalen, lot owner in the adjacent Shepherd Wood Subdivision, made reference to a packet he had submitted the day of this meeting. Mr. Whalen referenced the packet containing copies of ownership deeds and pictures. Mr. Baldau asked if Mr. Whalen was in objection to the previous variance or the proposed subdivision. Mr. Whalen stated he was in opposition to the variance because it was not publicly noticed. Mr. Surkamp stated he lived near the property in question and therefore was quite familiar with the location. Ms. Deming questioned if Amnesty Way was going to be improved. Ms. Kelly stated the variance that was obtained was to keep the road "as is." Peggy Gordon, a property owner who lives off of Amnesty Way spoke regarding the condition of the road and presented pictures to the Planning Commission. Ms. Gordon also mentioned a possibly illegal landscaping business that has been using Amnesty Way. Phil Simpson, lot owner in the Swallow Subdivision, stated that currently all of the residents on Amnesty Way put their trash on Mr. Foxen's property near the mailboxes because a trash truck cannot access Amnesty Way. Nancy Whalen, lot owner in the adjacent Shepherd Wood Subdivision, described the emergency access route across her property and the condition of it. Mr. John Foxen, lot owner in the

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adjacent Shepherd Wood Subdivision, stated he was opposed to the development. Mr. Foxen gave a brief history of his personal understanding regarding the road condition and ownership, which were verbally conveyed to him when he moved to the subdivision 16 years ago. Mr. Surkamp asked who maintains Amnesty Way presently. Mr. Simpson stated Shepherd Wood Homeowners. Mr. Surkamp mentioned that under WV State Law that this would be a matter of 'adverse possession.' Mr. Whalen stated he felt the HOA of Shepherd Wood was presented an entirely different option for the creation of these two lots by Mr. Wilson other than what the variance was actually approved for. Several others from the HOA agreed. Ms. Gordon stated she would be OK with the final plat if road improvements were made. Ms. Kelly read a condition on the final plat, which states Amnesty Way would be improved/maintained by the lot owners of the proposed Wilson Subdivision, as per the engineer's request at the time the September 12, 2006 variances were obtained. Mr. Surkamp discussed the option of postponing the final plat in order to give the HOA time to gather evidence that Amnesty Way is indeed legally its road. Mr. Sidor closed the public hearing.

Mr. Shepp provided the Planning Commissioners with a couple of plats and deeds. Mr. Shepp submitted deeds and information to demonstrate that Mr. Wilson did in fact have ownership of Amnesty Way and that the lot owners of Shepherd Wood had an access easement granted to them. Mr. Shepp stated Mr. Wilson's variances were granted contingent upon specific road improvements. With the approval of the final plat those road improvements will be made. Mr. Shepp reminded the Planning Commission of legal counsel's opinion that if a variance is granted it becomes the 'new' standard. With respect to 'adverse possession' certain conditions are set forth in the State Law, which Mr. Shepp was not directly familiar with, but regardless of those conditions the Planning Commission was not the body to make that determination. Also, since Shepherds Wood has the right to maintain and access to the road by deed, they cannot claim adverse possession because they've been granted permission to do so. Mr. Surkamp wanted it noted that he was in objection to that comment.

The CD was changed at 8:16 p.m. and the meeting resumed at 8:20 p.m.

Mr. Michael Wilson, owner, made a presentation. Mr. Wilson cleared up the confusion regarding the HOA's meetings and his own discussion with the HOA president at the time. Mr. Wilson said he researched Amnesty Way's history prior to purchasing the lot.

Ms. Deming asked what Note #20 regarding abandoning the existing dwelling meant. Mr. Wilson stated he intends on living in the existing home while his new house is being built and then to convert the existing home to use as storage. Ms. Deming asked what the term "abandoned" meant. Staff stated that when Mr. Wilson obtains a building permit for the new house a condition of approval would be that the kitchen would be dismantled in the existing home.

An error occurred on the CD and a new one was put in at 8:39 p.m.

Mr. Surkamp stated the 60 day time frame on this final plat would be May 30, 2007. Mr. Baldau then mentioned the Planning Commission had another regular meeting on May 22, 2007 if they

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were inclined to postpone as Mr. Surkamp had previously discussed. Mr. Reynolds asked staff if the comments they heard would convince them to change their recommendation. Staff stated it wouldn't. Mr. Kane asked Mr. Wilson if his intention was to continue using the existing driveway because it is shown to be encroaching on an adjacent property line. Mr. Wilson stated he did not know if he could change the location of the road. Mr. Surkamp again stated Amnesty Way had been maintained by Shepherd Wood, therefore, this should be considered adverse possession. Mr. Kane asked for Mr. Casimiro's opinion. James Casimiro, Assistant Prosecuting Attorney, stated he did not know much about that particular section of the law, but even so, a judge would need to make that determination not the Planning Commission.

Ms. Deming motioned to approve the final plat with staff contingencies. Mr. Reynolds seconded the motion. Mr. Kane stated he did not want to approve a subdivision in which Mr. Wilson could not confirm that the existing encroachment would not be continued. It was decided that if the subdivision were approved it would be with the understanding that the driveway would have to be located within the platted easement only. Mr. Baldau asked as a friendly motion that Ms. Deming amend her motion to state the driveway must be within the prescribed 30 foot wide right-of-way. Ms. Deming and Mr. Reynolds concurred. The motion passed 7 for and 1 opposed (Mr. Surkamp).

6. Final Plat Public Hearing for the North Hills at Cress Creek Subdivision, 20 single family lots on 20 acres, 80 acres residue, 75 of which will be in a conservation easement. Mr. Dunleavy recused himself and left the room stating he was not familiar with the project. Staff recommended approval of the final plat pending submission of originally signed plats, bonding and recordation within 90 days. Mike Shepp with Dewberry was present to answer Commissioner's questions. Mr. Sidor opened the public hearing. There was no public comment. The public hearing was closed. Mr. Surkamp motioned to approve the final plat with staff contingencies. Ms. Deming seconded the motion. Mr. Reynolds had a question regarding the conservation easement. Mr. Shepp explained the building rights to Mr. Reynolds. The motion passed 7 for and 1 abstention (Mr. Dunleavy). Mr. Dunleavy returned to the meeting room.

7. Public Hearing to consider public comments on the proposed petition to amend the Jefferson County Zoning and Land Development Ordinance/Map. The proposed petition is intended to re-zone property designated as Parcel 47 on Tax Map 3B of the Middleway District into the Industrial/Commercial zoning district. The property is currently in the Village District. The owner of record of the property is Dennis M. Mongan, Jr. The subject property is approximately 0.16 acres located in Jefferson County on the north side of Route 480 (Kearneysville Pike) adjacent to the Sheetz Gas Station/Convenience Store in Kearneysville. (PC File #Z06-02). Staff stated that although the use may fit/comply with the Comprehensive Plan the Planning Commission needs to be aware of the fact that the site will need to meet all site plan requirements such as landscaping and parking buffers. Mr. James Crawford, Attorney, made a presentation. Ms. Deming asked if the site had water or sewer. Mr. Dennis Mongan, owner, stated there is no water to the site. Mr. Surkamp asked if the existing house was to be removed. Mr. Mongan stated he would be using it as an office. Mr. Sidor opened the public hearing. There was no public comment. The public hearing was closed. Ms. Deming motioned to find the rezoning not consistent with the Comprehensive Plan because the site was very small, traffic

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concerns and the lack of water and sewer/septic. Ms. May seconded the motion. Mr. Surkamp stated he believed a used car lot would indeed be a good use for this location. Mr. Kane stated they were to make a determination based on compatibility with the Comprehensive Plan not based on site plan approval. Ms. Kelly read the permitted uses in both the Village District as well as the Industrial/Commercial District. Ms. Deming withdrew her original motion. Ms. May withdrew her second. Mr. Baldau motioned to find the rezoning compatible with the Comprehensive Plan. Mr. Kane seconded the motion, which passed 7 for and 1 opposed (Mr. Sidor).

8. Discussion with Legal Counsel. Tamara DeFazio, Pullin, Fowler and Flanagan, Re: Aubrey Henry vs. Jefferson County Planning Commission. Moved under Item # 11.

9. Request by Annette van Hilst/Dewberry on behalf of Tricia Churchey for a variance from Section 8.2a.20. e)2. Preliminary Plat Requirements, shoulder widening shall be provided as follows: (2) Local service routes with current ADT from 1200 to 1999 or projected year 2000 ADT from 1500 to 2499 – Minimum six feet wide, paved to WVDOH specifications extending across the front of the property or a distance of four hundred feet, whichever is less. Ms. Kelly deferred to Roger Goodwin, Chief County Engineer, for his recommendation since this was an engineering issue. Mr. Goodwin recommended granting the variance contingent upon the developer providing a minimum of 25 feet from centerline road improvement easement along Shepherd Grade Road.

Annette van Hilst with Dewberry was present to answer Commissioner's questions. Ms. van Hilst stated this proposed subdivision could have processed as a minor subdivision had the Health Department not required the owner to connect to water and sewer lines. At a previous meeting Ms. Churchey was granted a variance to allow the applicant to bypass the Community Impact Statement due to the minimal impact of the subdivision. Ms. van Hilst also stated that had the Health Department not required Ms. Churchey to connect to City lines that Ms. Churchey would not have had to upgrade the road conditions.

Ms. van Hilst mentioned one of the purposes in obtaining this variance was to preserve the existing tree line. Cynthia Darlington with Dewberry showed the Planning Commission where the proposed water and sewer lines would be. The entrance, tree line and sinkhole locations were also scaled out for the Planning Commission on a plat Ms. van Hilst provided.

Mr. Sidor asked for public comment. Mr. Gary Inglebretson spoke in favor of the variance in order to preserve as many trees as possible. Mr. Surkamp asked if it were possible to preserve a certain amount of trees. Ms. Kelly stated they could mark it on the preliminary plat and then once construction commences the contractor would have to mark the tree line. It was asked if a fence or wall could be put up to make sure trees weren't accidentally damaged by construction. This is not currently required by Ordinance. Mr. Kane motioned to approve the variance request contingent upon the preliminary plat and final plat showing a tree line preservation along with staff contingencies. Mr. Reynolds seconded the motion. Mr. Baldau stated he believes there are safety issues with traffic flow and he did not want to approve the variance simply for aesthetic purposes. Mr. Reynolds stated he would normally concur with that theory except in this instance

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the subdivision is only for an additional 2 lots, therefore, the impact would be minimal. Mr. Dunleavy stated he believed the applicant was using the excuse of saving trees in order to save on the cost of developing the roadway to County standards. The motion passed 6 for and 2 opposed (Mr. Dunleavy and Mr. Baldau).

8. Request by Paul M. and Nancy L. Tibbs for a variance from Section 5.2.6 - to allow one more property to use the 50' right-of-way which now serves three properties. Ms. Kelly recommended approval of the variance. Mr. Goodwin stated this is an Ordinance requirement but the Planning Commission has granted variances such as this numerous times before and deferred the decision to them. Mr. Paul Tibbs explained the purpose of the variance was to help out a young couple that wanted to remain in the County and also stated the condition of the roadway was adequate. Mr. Sidor asked for public comment. There was none. Mr. Baldau motioned to approve the variance. Mr. Kane seconded the motion, which carried unanimously.

The CD was changed at 10:05 p.m. and the meeting resumed at 10:11 p.m.

Mr. Sidor asked if the Planning Commission would agree to considering Item #18 Actionable Correspondence. (a) Old Standard LLC – Petition for Rezoning before Item #11. Ms. Tamara DeFazio agreed to the agenda change, as did the rest of the Planning Commission.

11. Request by Attorney Braun Hamstead on behalf of Paul L. and Donna K. Ashbaugh for a variance of Section 2.1a, requirement that no new building right is created by a proposed merger to 1.2250 acre lot and owners appeal staff's determination. Ms. Kelly said the variance was two fold in that Mr. Ashbaugh wanted to appeal Ms. Kelly's decision and to get a variance from Section 2.1a. It was noted that neither the applicant nor their Attorney was present. Mr. Baldau motioned to deny the variance since no one was there to represent the request. Ms. Deming seconded the motion, which carried unanimously.

18. Actionable Correspondence. (a) Old Standard LLC – Petition for Rezoning. The County Commission's correspondence regarding a meeting date was discussed. Mr. Surkamp attempted to go into detail about what has been proposed by the developer but was asked not to by the Planning Commission members at this time because the purpose of this agenda item was strictly to determine a meeting date. After some discussion a special meeting date of June 5, 2007 was set. The Planning Commission was reminded that the advertisement for the public hearing would have to be in by Friday, May 11, 2007. Mr. Paul Rosa addressed the Planning Commission as did Michael Cassell, Attorney for the developer. Mr. Casimiro directed the Planning Commission as to how they should restrict public comment; given the fact that this is the only time for the public to speak they should be not be restricted too much in content. The following is to be placed in the advertisement:

- a. Date: June 5, 2007
- b. Time: 7:00 p.m.
- c. Location of meeting (Zion Hall 1<sup>st</sup>, Wright Denny 2<sup>nd</sup>, Staff determines 3<sup>rd</sup>)
- d. Language from 8A
- e. Written testimony/material must be left with the Planning Commission at that meeting.

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- f. Time limitations: Petitioner: 15 minute presentation and 5 minutes for rebuttal  
Abutting Property Owners: 10 minutes  
Elected Officials: 3 minutes  
Individuals: 3 minutes

Mr. Baldau motioned to hold the rezoning public hearing on June 5, 2007 at 7:00 p.m. with the location being at either of the following Zion Hall 1<sup>st</sup> choice, Wright Denny 2<sup>nd</sup> choice or Staff determines 3<sup>rd</sup>. Mr. Kane seconded the motion, which carried unanimously

Mr. Baldau motioned to go into executive session to discuss pending litigation. Mr. Kane seconded the motion, which carried unanimously.

At this point staff left the room and did not return allowing the Planning Commission to adjourn at will.

Ms. Deming, Secretary, provided the following information for the minutes:

Mr. Baldau motioned to come out of executive session at 11:49 p.m. Ms. May seconded the motion, which carried unanimously.

Mr. Dunleavy motioned to adjourn the meeting at 11:49 p.m. Mr. Reynolds seconded the motion, which carried unanimously.

The meeting adjourned at 11:49 p.m. on May 8, 2007. A detailed transcript of this meeting can be found on CD # 45, 46, 47 & 48. These minutes were prepared by Jennilee Hartman.