

Minutes
Jefferson County Planning Commission
January 8, 2013

The Jefferson County Planning Commission met on January 8, 2013, with the following Commission members present: Paul Taylor, President; Eric Smith, Vice President; Steve Stolipher, Daniel Hayes, Morgan Etters and Kelly Baty (arrived at 7:05 p.m.). Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Gene Taylor, J.P. Phillips and Walt Pellish were absent with notification. In the absence of Mr. Gene Taylor, Mr. Paul Taylor will be referred to as *Mr. Taylor* exclusively for the purpose of these minutes.

Mr. Taylor called the meeting to order at 7:03 p.m.

1. Election of Officers.

Mr. Hayes nominated Paul Taylor for President. Mr. Stolipher seconded the nomination.

Mr. Taylor nominated Daniel Hayes for Vice President. Mr. Stolipher seconded the nomination.

Eric Smith nominated Morgan Etters for Secretary. Mr. Stolipher seconded the nomination.

Morgan Etters declined the nomination.

Mr. Hayes nominated Eric Smith for Secretary. Mr. Taylor seconded the nomination.

There was no further discussion. The slate of officers on the floor were Paul Taylor for President, Daniel Hayes for Vice President and Eric Smith. No one was opposed to the slate of officers. Mr. Taylor called for a vote which was unanimous.

2. Approval of the 2013 Planning Commission Meeting Schedule.

Mr. Hayes motioned to approve the proposed schedule as planned with the following exceptions, that the November 26th and December 24th meetings be cancelled due to the Holidays. Mr. Stolipher seconded the motion, which carried unanimously.

3. Approval of the minutes for the December 11, 2012 meeting.

Mr. Stolipher motioned to approve the minutes. Mr. Smith seconded the motion. Mr. Taylor and Ms. Etters recused themselves as they were absent from this meeting. Mr. Taylor called for a vote which passed unanimously among the remaining voting members in attendance (Mr. Smith, Mr. Stolipher and Mr. Hayes).

4. Citizen Communications (hereinafter known as CC).

Mr. Taylor read the statement from the agenda which clarified the intent of CC. Ms. Brockman retrieved the sign in sheets for Mr. Taylor. Mr. Taylor addressed those who had signed up for CC.

Mr. Joe Spurgas indicated that he would like to speak on Item #7 which was not open for public.

Mr. Spurgas addressed the fact that the applicant of Item #7, the request pertaining to Morgan's Grove Market, was seeking to circumvent the rules and that it was his interpretation that it was this Commission's responsibility to require the developers to follow all the rules. Mr. Mike Austin also addressed to Commission regarding Item #7 stating that he believed granting the request would have a negative impact on the community. It wouldn't allow them the opportunity to view the entirety of the plan. Mr. Austin also believes that this approval could create an adverse effect on the credibility of the Commission.

5. **Request for postponement.** None.
6. **Request by applicant Morgan's Grove Market (S12-06) to be represented by Peter Corum, Twin Oaks Subdivision, L.L.C, and Fred Blackmer, FB solutions, for a waiver from the following sections of the Jefferson County Subdivision and Land Development Regulations:**
 - a) **Section 20.102(B): to allow surface site grading in anticipation of subsequent procedural and document approvals (PCW12-08).**

Before proceeding with the applicant's waivers, Mr. Hayes requested that the Commission hear each waiver individually, take public comment and, in turn, vote on them separately. The Commission agreed.

Mr. Taylor read aloud all of the waivers the applicant was requesting and asked staff to present. Mr. Rivard delivered a PowerPoint presentation which highlighted the overall location of the grading. Mr. Rivard stated that the Regulations require a site plan to be approved before any site work can be done. Mr. Rivard explained that the request was not intended to waive the standards of the Regulations but to separate the order of approvals. Mr. Rivard pointed out that grading did not constitute commencement of construction with regard to vesting the Conditional Use Permit (CUP). Furthermore, Mr. Rivard informed the Commission that removal of the existing concrete pad would void the approved zoning certificate that is currently issued for the Morgan's Grove Farmer's Market (ZC11-15) that is conducted during the spring and summer months.

Mr. Saunders stated that a similar waiver request was granted by the Commission in the past with the following conditions:

1. The grading permit is issued to allow the owner to perform site grading for the building pads. This permit is subject to the requirements of the sediment and erosion control plan submitted and approved as part of the grading plan and building permit application; and
2. The building permit is issued only for the foundations of the proposed buildings (building construction will stop at the foundations until the site plan is approved); and
3. The owner/Developer assumes all risk for "jump-starting" the project and understands that the final site plan design approved by the planning commission might necessitate some changes and additional construction cost; and
4. Provide bonding of all proposed site improvements pertaining to the permit.

Mr. Saunders continued by stating that, in addition to the above conditions, Engineering proposes the following conditions: the applicant obtains an NPDES permit; submits a satisfactory site grading plan for review and approval; and, provides bonding for the sediment and erosion control/Stormwater Management, etc. He further stated that if the applicant agreed to these conditions that Engineering would support the waiver request.

Mr. Fred Blackmer presented the request to the Commission. Mr. Blackmer pointed out that the packet included an addendum that was intended for his (zoning) variance request and not the waiver request. Mr. Blackmer submitted a copy of the correct addendum for the record. Mr. Blackmer continued summarizing the nature of the request by stating the intent of the waiver was not to subvert any regulations but merely to allow this phase of the project to continue while processing the rest of the site plan so that when the final approval is complete they will be ready to build. Mr. Blackmer stated they hoped to grade

the site now in order to build by spring. Mr. Blackmer confirmed that the site would still conform to all engineering requirements and would be bonded and that the applicant would take on any risks of site design changes during the approval process.

Joe Spurgas, Eleanor Finn, Ann Spurgas and Austin Porter spoke in opposition to Item #6a. Issues raised were the impact the development would have on the adjacent neighbors, the close proximity of the development to Town Run, the potential for problematic grading and the need for creating a benchmark for well testing as required by the Conditional Use Permit.

Ms. Brockman drew the Commission's attention to a copy of the applicant's CUP that had been provided to them at the onset of the meeting and explained that the well testing was a requirement of the CUP. Mr. Hayes explained that there were industry standards that must be met when dealing with stormwater management and that an NPDES permit must be received before the applicant could begin any site grading.

Mr. Blackmer addressed the public's comments.

Mr. Baty expressed his concern regarding allowing the applicant to do something that the County does not have a process for. Mr. Baty feared that the outcome of the project may not be as they predict if the applicant is allowed to phase the project.

The Commission discussed various outcomes of when a development is allowed to grade prior to final approval with each Commissioner weighing in on the topic.

Mr. Hayes argued that there was a process for phasing the project and that was by means of the waiver process and that each waiver is reviewed on a case by case basis.

Mr. Stolipher motioned to approve the waiver by including Mr. Saunders' conditions in the Engineering report with the exception of eliminating condition #2. Mr. Hayes seconded the motion. Ms. Etters offered a friendly amendment to revise the language in the motion to '*preliminary rough grading*' and that text should be added stating that no foundations would be poured as part of the grading. Mr. Stolipher amended his motion by removing Condition #2 on the Engineering Report and adding, "There will be no foundations with this permit." Mr. Hayes seconded the revised motion. Mr. Hayes seconded it.

Mr. Taylor called for a vote of the original motion including the amendment. The motion carried with five (5) in support and one (1) in opposition (Mr. Baty). See attached motion sheet.

b) Section 22.208: requesting relief from the road frontage sidewalk (PCW12-09).

Mr. Rivard provided the Commission with a brief synopsis of the request stating that Staff does not believe that the four criteria necessary for granting a waiver have been met. Mr. Rivard pointed out that sidewalks would be in keeping with the applicant's business model. Mr. Rivard recommended that the Commission could require that a 10' easement be provided across the frontage of the property should the Commission choose to grant the request.

Mr. Fred Blackmer presented the request to the Commission. Mr. Blackmer read from various sections of the Subdivision Regulations, including Section 22.208, stating that he believed staff was misinterpreting the Regulations and that they did not apply to this project.

Mr. Groh and Ms. Brockman addressed the Commission's questions.

Peter Corum addressed the Commission stating that they will be required to connect at two points with the Morgan's Grove Park per the CUP. In addition, Mr. Corum argued that an internal connection through the park would be a safer walkway than installing a sidewalk along Route 480.

Mike Austin, Joe Spurgas and Austin Porter spoke in opposition to Item #6b stating that the applicant should be expected to follow the rule. Mr. Austin stated he did not believe the applicant should use the park as a means to circumvent the regulations. The neighbors were favorable to Staff's recommendation of providing the 10' easement.

Mr. Stolipher motioned to close the public hearing. Mr. Smith seconded the motion, which carried unanimously.

Mr. Blackmer rebutted by clarifying that the applicant is not arguing about the internal sidewalks. The applicant is arguing that the front of the property has no parking, that the adjacent property owner is a private residence, and that there is bad terrain and a rock ledge where the sidewalk would be required.

Mr. Etters stated the Commission should be planning for the future and therefore she was in favor of an easement.

Mr. Hayes motioned to reject the waiver's proposal. Ms. Etters seconded the motion. Discussion ensued. Mr. Taylor called for a vote, which died two (2) in support of denying the request and 4 (four) opposed (Mr. Baty, Mr. Stolipher, Mr. Smith, Mr. Taylor) to denying the request.

Mr. Stolipher motioned to grant the waiver with the condition that the applicant provide a 10' bike/pedestrian easement along Route 480 (Kearneysville Pike) that shall be recorded by either a final plat or deed. Mr. Baty seconded the motion. Mr. Hayes stated he did not believe the request met all four of the criteria necessary for granting a waiver. Mr. Taylor called for a vote, which carried five (5) in support and one (1) opposed (Mr. Hayes).

c) Section 24.116(B)6: relief from subdivision ordinance requesting traffic study (PCW12-10).

Mr. Rivard displayed the proposed Department of Highways (DOH) entrance layout via the PowerPoint slideshow.

Mr. Saunders' presented his staff report to the Commission. Mr. Saunders briefly reviewed the requirements of the Regulations. Mr. Saunders explained that the proposed layout appeared to meet DOH requirement.

Mr. Groh clarified that the CUP required the applicant to do a Traffic Impact Study only if the DOH required one.

Mike Austin, Joe Spurgas, Eleanor Finn and Ann Spurgas were in opposition to Item #6c stating that a traffic impact study has not been done at this particular point before. The concern was that an increase in traffic will make this location particularly dangerous. Ms. Finn mentioned an accident that had occurred in front of this property. There was concern that a letter had yet to be received from the DOH confirming they were in agreement of this proposal.

Mr. Hayes motioned to close the public hearing. Ms. Baty seconded the motion, which carried unanimously.

Mr. Fred Blackmer explained that the regulations for the roads were different at County, State, and Federal levels.

Mr. Stolipher motioned to approve the waiver of a traffic impact study contingent upon the applicant constructing the improvements as designed on the submitted DOH plan and that the Engineering Department receive a letter from the West Virginia Department of Highway stating that a traffic impact study is not required. Mr. Smith seconded the motion. Discussion ensued. Mr. Taylor called for a vote which carried 5 in support and 1 in opposition (Mr. Baty).

The Commission took a break at 9:13 p.m. and returned to session at 9:22 p.m.

- 7. Request by applicant Fred Blackmer with FB solutions to have the Planning Commission schedule a public hearing for the Morgan's Grove Market Major Site Plan (S12-06) prior to staff deeming it complete as required by the Jefferson County Subdivision and Land Development Regulations (Section 24.119.D). This project consists of an agricultural-based market. Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses. This property is located at 3988 Kearneysville Pike (Rt. 480), adjacent to Morgan's Grove Park and is designated as Tax District: Shepherdstown; Tax Map: 13; Tax Parcel: 26.1, 26.2, 26.3 and 26.4. This item is not open for public comment.**

Mr. Rivard gave a brief description of the request. Mr. Rivard directed the Commission's attention to a list of outstanding items from the site plan listed in the memo. Ms. Brockman informed the Commission of the noticing requirements for a site plan public hearing. Mr. Groh stated that 8A.5.8 states that the application must be complete and the applicant is admitting that the application is not complete. Mr. Groh also is concerned that the noticing requirement will not be met because a completed application will not be in the office for a full 21-day timeframe.

Mr. Rivard informed the Commission that Staff had been in contact with the Corporation of Shepherdstown, the provider of the water and sewer for the site, who stated that the applicant had yet to submit an application for services. Mr. Rivard stated this process could take several months of review.

Mr. Blackmer clarified that they had attempted to submit at the State level on Monday, January 7, 2013, however their application was rejected because they were required to have the Corporation of Shepherdstown's approval in place prior to submitting to the State.

Mr. Groh asked the applicant to confirm that they had a variance request to be heard before the Board of Zoning Appeals on January 17, 2013, for this project which would, in effect, deem their application incomplete at this time.

Mr. Blackmer stated that they anticipated that their application would be complete by the February 12, 2013 Planning Commission meeting.

Peter Corum addressed the Commission and stated that they were deeming application complete. Mr. Corum stated they were anticipating an opening by May 30, 2013, and that they were running applications parallel to each other in order to achieve that.

Mr. Hayes motioned to deem the application currently incomplete. Mr. Baty seconded the motion, which carried unanimously.

8. Discussion on a draft amendment to the Jefferson County Planning Commission Bylaws regarding the Conduct of Public Hearings and Public Hearing procedures for Applications. This item is not open for public comment.

Discussion among the Commission ensued regarding the draft document prepared by Mr. Stolipher. The Commission decided that the document was related to meeting proceedings rather than a bylaw. Mr. Hayes motioned to make a revision to the document that all conduct outlined will be at the discretion of the President. Mr. Baty seconded the motion. Mr. Hayes amended his motion to direct staff to clean the document up to ensure compliance with local terminology. Mr. Baty seconded the amended motion, which carried unanimously. Mr. Taylor called for a vote of the original motion to include the amendment, which carried unanimously.

9. Reports from Legal Counsel and legal advice to the Planning Commission. None.

Active Litigation:

- Far Away Farms
- Cedar Meadows Airpark

10. Director's Report.

Ms. Brockman gave an overview of the following information from her Director's Report (included in the packet): Introduction of Chris Whittaker, Comprehensive Plan Planner, update on the Comprehensive Plan Steering Committee meetings, the upcoming public hearings on the rezonings, the Brown Bag Lunch and Learn Sessions, the Envision Jefferson 2035 Public Workshops and their associated dates. Mr. Rivard addressed the Commission and discussed an overview of existing conditions.

11. Monthly Development Activity Report. None.

12. Liaison Reports: None.

- County Commission Meeting
- Health Department Meeting
- Public Service District Meeting
- Parks and Recreation Meeting
- Jefferson County Development Authority Meeting
- Water Advisory Committee Meeting

13. **President's Report.** None.

14. **Actionable Correspondence.** None.

15. **Non-Actionable Correspondence.** None.

Mr. Hayes motioned to adjourn the meeting at 10:13 p.m. Mr. Smith seconded the motion, which carried unanimously. An audio recording and/or a video recording of the meeting may be found on our website. These minutes were prepared by Jennilee Hartman, Zoning Clerk.