

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS SPECIAL MEETING
AUGUST 10, 2006

The Jefferson County Zoning Board of Appeals met on Thursday, August 10, 2006 at 3:00 p.m., in the Charles Town Library Meeting Room. Members present were Thomas Trumble, Edwin Kelly, Christy Huddle and alternate member Frances Morgan. Tiffany Hine and Jeff Bresee were absent with notification. Rebecca Burns, Executive Secretary, Paul Raco, Zoning Administrator and Stephanie Grove, Assistant Prosecuting Attorneys were also present. Ms. Morgan sat in Ms. Hine and Mr. Bresee's absence.

The meeting was called to order by Mr. Trumble at 3:00 p.m.

1. Action on the Staff Report for the Payne Ford Station Subdivision (#Z02-02). Mr. Trumble disclosed that prior to this meeting he had contact with two members of the adverse party involved in the Paynes Ford Station proceedings. Mr. Trumble stated they do not constitute ex-parte contacts because they are procedural in manner. Andy Arnold posed procedural questions about distribution of materials and he referred him to Paul Raco. The second was an email asking questions about the procedures, to which he did not respond.

Ms. Morgan stated during the last session Ms. Huddle pointed to a discrepancy in the soils report. After the meeting adjourned Mr. Chakmakian asked Ms. Huddle what her concerns were. Ms. Huddle noted for the record that the offending chart is on page 5 of the soils report.

Ms. Morgan read a statement into the record (copy attached). Ms. Grove, as legal counsel to the Board, stated the Prosecuting Attorney's Office acted and advised the County Commission on advice of the State Attorney General's Office.

Mr. Trumble stated they have received materials from the plaintiff but nothing from the aggrieved parties. Ms. Grove stated it is dependent upon whether or not the materials were timely filed. Mr. Trumble stated in the near future the Board needs to make a determination on the completeness and timely filing of documents under their Rules of Procedures. Ms. Grove read the Zoning Administrator's duties under Article 3, Section 3.2 of the Zoning Ordinance. Mr. Raco explained that Mr. Arnold was called and told that his documents were not timely filed under the current rules but he was welcome to deliver them to the Board at this meeting.

Mr. Trumble read a joint document into the record (copy attached) submitted by both Mr. Arnold and Mr. Chakmakian entitled "Suggested Procedure to Conduct this Afternoon's Hearing". By consensus the Board agreed to abide by the suggested procedures noting Mr. Trumble as Chair would have flexibility in determining if testimony or evidence is repetitive.

Mr. Raco entered the Staff Report into the record (copy attached). No one present indicated they needed to hear the reading of the Staff Report. Mark Dyck with William H. Gordon and Associates addressed resolved and unresolved issues (copy attached). Barbara Hartman and Scott Chapman questioned whether or not certain buffers were in the Staff Report as either resolved or unresolved issues. Mr. Raco stated they were a part of the report.

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Ms. Huddle motioned to accept the Staff Report as submitted into the record with the following changes: delete unresolved issue #38 since it is unresolved issue #35; keep unresolved issue #40 as an unresolved issue; shift resolved issue #9 into an unresolved issue; and, add as a resolved issue that a 50' landscape buffer be provided along Mt. Zion Road (Route 9/19). Ms. Morgan seconded the motion which carried unanimously. The public agreed to the accuracy of the Staff Report with the modifications.

2. Public Hearing on the unresolved issues resulting from the Compatibility Assessment Hearing held on May 24, 2006 for the Paynes Ford Station Subdivision (#Z02-02).

3. Action on the Conditional Use Permit for the Paynes Ford Station Subdivision (#Z02-02). Mr. Chakmakian stated that he and Mr. Arnold agree that items #2 and #3 on the agenda can be acted upon simultaneously. Mr. Chakmakian in his opening gave a brief chronology of the project to this point and submitted documents entitled "Order Granting Petitioner's Writ of Mandamus" and a Memo to the Board dated September 19, 2002 with attachments (copies attached). Mr. Chakmakian asked that the Board limit their consideration to the resolution of the unresolved issues and compatibility with the neighborhood.

Mr. Arnold stated that the last substantive meeting of this Board pertaining to Paynes Ford Station occurred on April 17, 2003 and at that time the Board reserved their right to decide at a later date whether or not the project should be considered under the LESA score of 55 points or 60 points. Mr. Arnold noted that if the 55 point threshold applies then items 2 and 3 on the agenda are moot. Mr. Arnold submitted his testimony dated July 7, 2006 (copy attached). Mr. Arnold stated that if the lower score applies then the project is not compatible with the neighborhood based on density and roads alone.

Ms. Huddle motioned to adjourn for a 10 minute recess before moving forward with testimony on the unresolved issues. Mr. Kelly seconded the motion which carried unanimously. Ms. Huddle motioned to return to regular session at 4:32 p.m. Mr. Kelly seconded the motion which carried unanimously.

Mr. Chakmakian called the following individuals as witnesses to provide testimony for the record: Mark Dyck, Director, with William H. Gordon & Associates and registered as a WV landscape architect; Leonard Knee, attorney with Bowles Rice who practices environmental law; Jeff Mitchell, licensed remediation specialist and geologist with Triad Engineering; John Callow, transportation consultant and Vice President and Manager with Patton Harris Rust; and David Ralston, President of Jefferson Orchards and owner of the property. Each gave testimony in their area of expertise and Mr. Dyck addressed the unresolved issues outlined in the Staff Report item by item and submitted to the record (copy attached along with large maps which can be found in file #Z02-02) a report entitled "Unresolved Issue Response and Resolution". Mr. Arnold cross examined each witness.

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Mr. Arnold called the following individual as a witness to provide testimony for the record: Tim Gerhard, cartographic specialist who performed the density analysis (copy of written analysis attached the large map can be found in file #Z02-02). Mr. Chakmakian cross examined the witness.

Ms. Morgan motioned to adjourn for a 10 minute break at 5:40 p.m. Mr. Kelly seconded the motion which carried unanimously. Ms. Huddle motioned to return to regular session. Mr. Kelly seconded the motion which carried unanimously.

The Board adjourned for a dinner break at 6:30 p.m. for one hour per Ms. Huddle's motion which was seconded by Mr. Kelly and unanimously acted upon by the Board. Ms. Huddle motioned to return to regular session at 7:43 p.m. Mr. Kelly seconded the motion which carried unanimously.

Mr. Chakmakian called Mr. Dyck as his only rebuttal witness to refute Mr. Gerhard's testimony.

Mr. Chakmakian in closing asked that the Board issue the Conditional Use Permit telling them what the conditions of approval are to be. Mr. Chakmakian noted the site scores below the required 60 point threshold; it is compatible based on looking at the tax map and adjacent properties density; the ground itself is dead and there will be no more orchard; and, the property is in voluntary remediation and they are committed to cleaning up the site.

Mr. Arnold in closing asked the Board to deny the Conditional Use Permit and not grandfather the LESA score. Mr. Arnold noted 57 is a relevant score because it scores the site; the density proposed is too high and not compatible with the surrounding area; the application on two previous occasions was determined to be incomplete; and, this is the first time we have heard the property is a brown field.

Mr. Kelly motioned to adjourn for deliberations at 9:07 p.m. Ms. Morgan seconded the motion which carried unanimously. Ms. Morgan motioned to return to regular session at 11:43 p.m. Mr. Kelly seconded the motion which carried unanimously.

Ms. Huddle motioned the Board follow Judge Steptoe's Order of December 12, 2005 that 60 is the LESA score that applies and to impose as conditions of issuance all agreed upon items in the developer's report dated July 7, 2006 entitled "Unresolved Issue Response and Resolution" whether or not the listed item was put in the resolved or unresolved section of the report; that the density not be less than 3.76 acres per unit or a maximum build out of 37 units so as to be compatible with the surrounding community; provide a 100' buffer along the rear property lines of Highland Way (unresolved issue #37); the developer retain the native vegetation on the side (west side) of the property closest to Opequon Creek (unresolved issue #20); the developer participates in the Voluntary Remediation program as agreed to and it be made a covenant that runs with the land; all wells on adjacent properties be tested before any construction is

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undertaken and after construction is complete (unresolved issue #39); and, that the Board issue the Conditional Use Permit with all stated items. Ms. Morgan seconded the motion which carried with a vote of 3 for and 1 opposed (Mr. Trumble). Ms. Huddle motioned to adjourn the meeting at 12:03 p.m. on Thursday, August 11, 2006. Mr. Kelly seconded the motion which carried unanimously.

A transcript of this meeting can be found on a CD #105, #106, #107, #108 and #109. These Minutes were prepared by Rebecca F. Burns.