

MINUTES
JEFFERSON COUNTY ZONING BOARD OF APPEALS
APRIL 17, 2003

The Jefferson County Zoning Board of Appeals met on Thursday, April 17, 2003 at 3:00 p.m., in the Jefferson County Meeting Room. Members present were Stephen Groh, Tiffany Hine, Douglas Rockwell and Thomas Trumble. Michael Cassell, Assistant Prosecuting Attorney, and Rebecca Burns, Executive Secretary were also present. Paul Raco was also present to represent the appeals of Paynes Ford Station and Blackford Farms.

The meeting was called to order by Mr. Groh at 3:00 p.m. Mr. Rockwell motioned to accept the Minutes of the March 20, 2003 meeting. Mr. Trumble seconded the motion which carried with a vote of 3 for and 1 abstention (Ms. Hine since she was not present at the March 20, 2003 meeting).

Ms. Burns swore in individuals who indicated they would be speaking.

Mr. Rockwell stated he would be recusing himself from items 1 and 3 on the agenda and asked that item 2 be considered first so he could then leave, then come back to hear items 4 and 5, and sit in on deliberation for items he was present for. The Board agreed by consensus.

OLD BUSINESS

2. Postponed from the March 20, 2003 meeting because no one was present to represent the request. Request by Greater Washington Investments, Inc., for a variance from the sign provisions to allow a model home/sales sign on Lot 4 of the Maddex Farm Subdivision (Article 10, Section 10.3/10.4). Linda Lowe of Ryan Homes represented the request stating the sign would be 4'x4', white with blue lettering and landscaped. There was no public comment about the sign.

1. Postponed from the March 20, 2003 meeting due to a lack of a quorum. Appeal of the LESA Point Assessment for the Paynes Ford Station Subdivision and administrative appeal by S.A. Arnold (AP02-01). Mr. Rockwell excused himself from the meeting room. Mr. Raco asked that the Board consider his motion for dismissal submitted at the March 20, 2003 meeting (copy attached). Mr. Raco noted he is prepared to speak to the remanded issues if the Board is so inclined.

Mr. Chakmakian stated he agrees with Mr. Raco. Mr. Chakmakian noted they have complied with the previous action of this Board and that the matter needs to be filed in Circuit Court to reverse the Boards previous decision.

Ms. Hine motioned to deliberate on the matter of dismissal of the appeal. Mr. Trumble seconded the motion which carried unanimously. Mr. Trumble motioned to return to regular session. Ms. Hine seconded the motion which carried unanimously. Mr. Trumble motioned to reconsider the appeal based on the measurements to the schools since there is no standard outlined to determine measurements. The motion died for a lack of a second. Mr. Trumble

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motioned to hear the appeal as it pertains to items #16, 19 and 22 of the support data. Ms. Hine seconded the motion which carried unanimously.

Mr. Arnold stated for the record he objects to the motion to reconsider based on only items #16, 19 and 22. Mr. Arnold stated the roads in the area serving the proposed subdivision are inadequate to serve an additional 218 houses and the information provided regarding #19 is insufficient and not meaningful.

Mr. Arnold stated the information provided regarding #19 is also not meaningful and does not achieve the goals of the comprehensive plan and is almost flippant in nature.

Mr. Arnold concluded that #16 also contains an insufficient response because it does not speak to pollutants, runoff and omits serious contaminants on the site. Ms. Bresee submitted a chart entitled Paynes Ford Station Soil (copy attached).

Mr. Raco submitted his testimony for the record (copy attached). Mr. Raco stated at this point the developer is simply trying to get to the Neighborhood Compatibility Hearing stage so the public can suggest things to make the project more compatible and that after this point there are many other opportunities for appeal.

Mark Dyck on behalf of the developer noted they have entered into a voluntary remediation process not unlike Hunt Field which was also an old orchard. Mr. Dyck noted that arsenic is a naturally occurring element in the soil as are other elements. David Ralston one of the owners of the property and President of Jefferson Orchards gave a history of the property as an orchard. Mr. Ralston stated that all DEP matters are public documents and that if they would be allowed to have the neighborhood compatibility hearing he will have an environmental engineer present to answer any questions.

Mr. Arnold in rebuttal asked that the appeal be upheld and that he believed their support data to be insufficient by omitting their entry into the voluntary remediation process.

Public Comment was received from Paul Burke. The Board adjourned for a brief recess prior to hearing the next matter.

NEW BUSINESS

3. Appeal of the LESA Point Assessment for the Blackford Farms Subdivision by Herb Jonkers (AP03-03). James Campbell represented the appeal and presented several large scale photographs, maps and charts. Mr. Campbell stated in his argument that they believe the USDA facility should be considered light industrial or research and development as defined by the Standard Industrial Classification Code (SIC). Mr. Campbell also cited other sites that they believe should have been considered in the overall LESA point assessment along with

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the transportation and water availability points (copy attached). Mike Shepp also spoke to the transportation routes.

Mr. Raco submitted his rational for the record (copy attached). Mr. Raco noted that as Zoning Administrator he changed his standard for measuring percentage of adjacent land based on the Judges decision in the Harvest Hills case.

Public comment was received from Vicki Faulkner, Paul Burke representing the Concerned Citizens of Jefferson County, Henry Blackford and Greg Kennedy representing Jefferson Utilities. Mr. Campbell stated Mr. Burke is duty bound to divulge who he represents. Kay Bresee and Christine Wolfe both stated Mr. Burke represents them. Mr. Burke also stated he represented Richard and Frances Latteral.

Mr. Campbell asked that the appeal be upheld and the Board not look at it in a vacuum. He noted that the Board has guidance with the SIC codes.

The Board adjourned for recess at 8:10 p.m. The Board reconvened at 8:20 p.m. with Mr. Rockwell present.

4. Findings of Facts and Conclusions of Law for the variance request by Brian and Jane Rourke for a variance from the rear setback requirements from 20' to 6' for an existing deck (Article 5, Section 5.4b). Mr. Rockwell motioned to accept the Findings of Fact and Conclusion of Law for the Chair's signature with the correction to the vote on the motion being made to reflect that it was 3 for and 1 opposed (Ms. Truman). Mr. Trumble seconded the motion which carried unanimously.

5. Rescheduling of the special meeting for discussion and/or action by the Board on adopting rules and procedures for filing timely appeals and requests for consideration by the Board. Mr. Rockwell motioned to schedule the meeting for May 1, 2003 at 3:00 p.m. if the County meeting room is available. Mr. Trumble seconded the motion which carried unanimously.

Ms. Hine motioned to go into deliberations for item 2 then back into regular session for action on item 2 so that Mr. Rockwell could then leave while the Board deliberates on items 1 and 3. Mr. Trumble seconded the motion which carried unanimously. Ms. Hine motioned to return to regular session to act on item 2. Mr. Trumble seconded the motion which carried unanimously.

2. Mr. Rockwell motioned to grant the variance by Greater Washington Investments, Inc., for a variance from the sign provisions to allow a model home/sales sign on Lot 4 of the Maddex Farm Subdivision contingent upon it being located on the same lot as the model home, it be non-illuminated, located in such a way so as not to obstruct visibility and once the model

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home is no longer a model home it be removed from the property. Ms. Hine seconded the motion which carried unanimously.

Mr. Rockwell recused himself for the remainder of the meeting. The Board adjourned for deliberations on items 1 and 3 and per their earlier action.

1. When the Board reconvened Mr. Trumble motioned to grant the appeal for Paynes Ford Station Subdivision in part and deny the appeal in part. Mr. Trumble stated the Board is shocked and angry at the low quality of the soil remediation. Mr. Trumble further stated the Board feels the information should have been made available and should have been made available in a timely fashion, it should have been available with all of the necessary technical documentation regarding the soils. And the fact that it wasn't made available in effect shifts the burden back to the public and away from the developer for providing that kind of information. Mr. Trumble underlined the fact that the Board hopefully will unanimously agree that they are really not happy with the low level of performance on the part of the developer. Mr. Trumble moved that regardless of item 16 all of the information regarding ground water, surface water and soil tests, including a remediation plan, a fully developed remediation plan, all information which has been transmitted between the developer and any government agency at the State and Federal level, any technical information between the developer and private individuals and corporations which he has been dealing with be submitted. In addition the Board wants any necessary interpretive information to follow, so for example in the case of soil analysis, the Board be given the necessary technical sampling data necessary to evaluate the report. And upon completion of the requested information that it be submitted to our Staff so that they may review the adequacy of it and once they have determined the information is adequate they then will again submit it to us for further review. In regards to traffic and recreation the information provided is adequate and is adequate to provide sufficient adequate public discussion. Finally, Mr. Trumble moved that the decision with regard to LESA points and whether or not the 60 or 55 would apply is something the Board reserves to decide at a later date. Ms. Hine seconded the motion which carried unanimously.

3. Ms. Hine moved the Board deny the appeal of the LESA Point Assessment for Blackford Farms Subdivision by following the rationale of the Harvest Hills decision, we will only be counting the adjacent parcels for our intents and purposes. Ms. Hine stated as part of the motion clarified that the Board has determined that the USDA is a governmental research facility there is no intense developmental pressure and it is neither commercial or industrial. For the ruling on the adjacent area we are only looking at the adjacent lots and parcel 16 which is agriculture, is not commercial, not industrial and is not intense development. We are only going to look at the immediate adjacent lots of the Fox Glen Subdivision. We will count the entire 513 acre parcel known as parcel 26. We will not be counting parcel 28 which has a calculation currently of 178 acres after the recalculation by removing the 178 acres it is still at a 92%. Also another issue raised on the appeal is the highway problem areas we do not believe

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the appellant met their burden of proof we believe that the decision Mr. Raco made is correct. We believe that with our decision on the adjacent lots and highway traffic it makes the decision dispositive. Mr. Trumble seconded the motion. Mr. Groh wanted to clarify that since the ruling on the adjacent property size and the traffic issue, makes the 3 points for water moot, it doesn't make a difference, no matter how we would decide on that it doesn't change the outcome so that's why we don't have to reach that, that is the amendment I would make. Ms. Hine stated she agrees as did Mr. Trumble. The motion carried unanimously.

6. Correspondence. There was no correspondence.

The meeting adjourned at 10:40 p.m. A detailed transcript of this meeting can be found on Tape(s) #49, #50 and #51. These Minutes were prepared by Rebecca F. Burns from notes taken by Mr. Cassell.