

## **Benton County Planning Board**

### **Public Hearing Minutes**

**March 17, 2010, 6:00 p.m.**

#### **1. Call to Order**

#### **2. Roll Call**

The Planning Board was represented by Scott Borman, Jim Cole, Mark Curtis, Lane Gurel, Bill Kneebone, Ken Knight and Heath Ward.

Staff was represented by Chris Glass, Teresa Sidwell and Karen Stewart.

**3. Disposition of the Minutes** of the February 17, 2009 public hearing meeting minutes as distributed. *Mr. Kneebone made a motion to approve the minutes; the motion was seconded by Mr. Knight. All members voted in favor of the motion.*

#### **4. Public Comment:**

Mr. Frank Winscott, Justice of the Peace for Benton County, District 2, stated that he had concerns regarding the Sunset Point project. He said that there have been similar circumstances in his district when developers from California built a high density development and left. Justice Winscott asked what the vested interest of these developers is. He added that in most cases it is the "almighty dollar". He urged the Board to do everything they can to protect the community. Justice Winscott stated that one main concern is the sewer system; he acknowledged that the system could be effective if maintained and repaired. He reminded the Board of a subdivision of 45 homes in which the sewer systems backed up into the basements because the developer had left the project with no one to repair or maintain the system. He stated that this is a real concern for Benton County, because the residents are now asking the County to step in and correct their issues.

Justice Winscott challenged the Board to be sure that there is an agreement for the ongoing maintenance and operation of the sewer system. He also recommended that there be an adequate construction bond and completion bond. Justice Winscott stated that the project in District 2 is a disgrace because the developer pulled out and left a scar on the earth. He added that bonds are expensive and developers don't like them but it is a protection for our community. Justice Winscott stated that he was very pleased with the Board's questioning at the TAC meeting because this project is an especially sensitive situation due to its proximity to the lake.

Mr. Ron Holloway of 19666 Larue Road stated that he felt Sunset Point would undergo a lot more scrutiny than average projects; he felt that it would be a very well engineered project. He said that some concerns were that proper engineering studies and drawings should be provided and that bonding be addressed by the Board. Mr. Holloway said that overflowing systems are a simple fix; he said that the housing density in the surrounding area is already high so the size of the project doesn't scare him. He felt that it would be a welcome addition to their community. He pointed out that the Fire Department could use the revenue and the rural water company could use more customers. Mr. Holloway stated that there are not many native "Arkies" in northwest Arkansas any more so he wouldn't hold the fact that the developer is from out-of-state against him.

Mrs. Kathy Bell of 21975 Bell Lane, Rogers stated that she is a property owner in Cedar Hills #1 Subdivision. She added that her main concern was that the Sunset Point project be required to have a completion bond. Mrs. Bell stated that she had seen many projects that have come to a sudden stop or prolonged delay in the area. She submitted photos of project delays and stops for the Board's review.

Mr. Jim Collier of 19641 Collier Lane stated that he shared the concerns addressed by the community petition submitted to the Board. He added that the roads are curvy, well paved but very narrow, no shoulders and subject to drop offs in excess of 10 inches. He submitted photos to the Board. Mr. Collier stated that added residential traffic and heavy construction equipment would increase the potential for damage to the county roads and would cause more expense to the county. He said that he has been working with the University of Arkansas to obtain information on the load capacity of the roads and he does not feel that the infrastructure is adequate with the doubling population. Mr. Collier implored the Board to require a bond covering the cost of potential repair to the roads.

Mr. Dan Schillinger of 8893 Larue Road stated that his concern was that of financial sustainability for the sewage treatment system. He added that funds for the system maintenance and repairs as well as upgrades should be available if only 1/2 or 1/3 of the homes are sold. Mr. Schillinger stated that full time home owners in the area have a vested interest in the community that is different from a weekend homeowner.

Mr. John Hobson of 8743 Stucky Lane stated that he would like to see the easement moved back more than the 5 feet that currently exists because of the slope of the land and potential run off into the lake. He added that he does not want to have 45 mailboxes in front of his house.

Mr. Robert Kossieck of 8452 Larue Road stated that the sewage system should have an emergency backup system in the event of a disaster. He added that portable generators have been proposed and would be only a patch. Mr. Kossieck stated that the project should have an emergency pump tied into an emergency generator system that will pump the effluent up to the processing plant.

Ann Collier of 19641 Collier Lane made a request that the Board go to the site to inspect it. She added that there is Beaver Lake on both sides of the future location of the sewage plant. Ms. Collier stated that even though there has not been any rain lately there is still water running across Larue Road at the Stucky Lane entrance. She added that she would not want to see blasting because her geothermal heating and air system would be knocked out.

Barbara Kossieck of 8452 Larue Road stated that during bad weather the roads are impassable and it would be impossible to get a repair truck out if the waste water system were to fail. She added that the system must be self-sustainable.

Phillip Putthoff of 9087 Larue Road stated that there are hairpin turns on the road. He added that there is a school bus route in the area. Mr. Putthoff said that there have been near misses on 2 deadly turns and the increased traffic could cause more problems.

## **5. New Business:**

1. **JP District 01** –Replat – **Indian Hills** – Silver Cloud Trail, Rogers

Mr. Franklin Miller represented the project.

Mr. Borman stated that the stipulation from TAC had been met by placing the existing structures on the plat. Mr. Gurel asked if the applicant wanted to move lot lines; Mr. Miller stated that Mr. Gurel was correct and that it was his own failure to file the plat a number of years ago.

*Mr. Kneebone made a motion to approve the project and Mr. Ward seconded the motion. All Board members voted in favor of the motion and the motion was passed.*

## 2. **JP District 13** – Informal Plat – **Schrader Acres** – Old Highway 68, Siloam Springs

Mr. Don Schrader represented the project.

Mrs. Stewart read a letter from the Fire Marshal stating that if development occurs as show in the plans all applicable fire code concerns can be met.

*Mr. Gurel made a motion to approve, the motion was seconded by Mr. Curtis, the project was approved by all members of the Board.*

## 6. **Old Business:**

### 1. **JP District 11** – Conceptual PUD – **Sunset Point at Beaver Lake** – 8766 Stucky Lane, Rogers

Mr. Garth Symonds represented the project.

Mr. Borman stated that he had emailed Cara Hill of ADEQ permit division and she had stated that preliminarily the project would require a permit from their office even though the wastewater system is less than 5,000 gallons due to ADEQ regulation #4. He added that as the project stands now, it may fall under regulation #17 as well because the project is surrounded by the lake. Mr. Borman asked the applicant if he had received an opinion letter from ADEQ. Mr. Symonds stated that he had and that he had forwarded two emails to Mrs. Stewart and the Board today. Mr. Borman stated that he knew where the information in the email came from and that it is not necessarily the case.

Mr. Borman asked the applicant if the Department of Health had reviewed the specifications for the wastewater system. Mr. Symonds stated that he had made an application to ADH for approval in principal and gave them the proposed specifications, drawings of where the drip fields were located, the capacity of the drip fields, and the percolation test results. Mr. Borman asked the applicant again if he had an approval letter from the Department of Health in Little Rock. Mr. Symonds stated that he did have a letter of approval dated February 2009. He added that there was a subsequent letter on Oct 29, 2009 which was submitted to the Planning Board.

Mr. Ward asked the applicant if there would be any blasting. Mr. Symonds responded that there would not be blasting. He added that a track hoe would be used to put in lines and if any significant rock was encountered that a mechanical hammer may be used. Mr. Symonds stated that the project will maintain the natural topography and he didn't foresee any reason for blasting. Mr. Ward stated that with regard to the wastewater system there is always a level of assessing the risk of something going wrong. He added that at times electrical power is lost and asked if it would seem unreasonable to have an automatic generator startup for the wastewater system. Mr. Symonds stated that it did seem reasonable and that the plan was to have a permanently installed automatic generator in the treatment plant if power was lost. He added that it would be prudent to have a number

of portable generators for residents to use to pump out their tanks if there was a prolonged power outage. Mr. Symonds stated that he was reviewing the idea of having a permanent generator at each house on standby.

Mr. Knight stated that the 5,000 gallons per day calculation is very tight; he added that equipment rated for low usage may be changed out. Mr. Knight said that the calculations are based on 40 houses and adding 5 more houses would put the amount "over the top". Mr. Symonds stated that the concept of adding 5 more houses was a possibility and subject to regulatory review. Mr. Knight stated that he would feel much better if he could see something signed by a licensed engineer. Mr. Symonds stated that the effluent goes into the surge tank that is sized at 16,000 gallons (approximately four times larger than the projected daily output of the system) which builds into the system an additional capacity. He added that the project is largely a second vacation home community and the output should be significantly smaller than the 4,990 gallons per day. Mr. Symonds stated that the surge tank would cater for extra loads such as a 4<sup>th</sup> of July weekend. Mr. Knight asked if the surge tank would be above or under ground. Mr. Symonds stated that he thought it would be above ground. Mr. Borman stated that as long as there is effluent in the system it would not freeze up unless it was down for a few days.

Mr. Cole asked if the applicant could review the changes made to the project since the original application. Mr. Symonds stated that the additional five homes was added as a possibility, replatting of the lots as requested by the Board, marginal changes to the wastewater system including the pump at the treatment plant, generator connected to the treatment system by an automatic transfer switch, treatment control panel will be controlled by a satellite system using cell phone technology, a conceptual approval letter from the Fire Marshal, approval for proposed easements, emails from each of the two utilities, water authority indicated that they would supply the homes with water, road grades will be reviewed to provide the most suitable material after an engineering analysis, POID concept has been abandoned, and financial security as well as NPDES permit requirements are still unknown.

Mr. Borman stated that it was the responsibility of the developer to make sure all stipulations placed upon the project are met. He added that a stipulation was placed on the applicant at the last meeting to get an opinion letter from ADEQ regarding the system capacity. Mr. Borman stated that the email he had received on this day was cut and pasted from the ADEQ webpage. He added that when he had given ADEQ the system specifications, they stated that you may fall under the requirements of regulations 4 and 17. Mr. Borman asked if, based on the concept, the applicant had an opinion letter from the permits division of ADEQ regarding whether the applicant will need a NPDES permit for the mechanical wastewater treatment system under regulation 4, 17 or 14; not cut and pasted from the regulations. Mr. Symonds responded that he thought the answer was no.

Mr. Ward stated that the wastewater treatment system was at the heart of the problem with this project. Mr. Symonds stated that when he started the process in early 2008, his first thought was to solve the issue of the wastewater system so he went to Beaver Water District and brought them a proposal of discharging effluent into Beaver Lake and they said that they really didn't like that and that he had responded that under the law he could do it. Mr. Symonds said that he went back to the drawing board and spent 8 months working with Beaver Water District to develop a suitable community wastewater system to ensure that the lake was protected. He added that in a letter from Beaver Water District, they had stated based on the proposal, the Sunset Point development may well serve as a model of future development on the lake. Mr. Symonds said that he then went to the Arkansas Department of Health and was in consultation for 1 year. He added that he reached out to three other water districts and had no adverse response. Mr. Symonds stated that he has adopted a meticulous approach to the protection of the lake. Mr. Ward stated that he

commends the developer for the work that has been done on the project but there are still a couple of details left to resolve.

Mr. Gurel stated that the applicant had asked that his project be treated as a Planned Unit Development; he pointed out that the Board would vote on the approval of the concept plan tonight. Mr. Gurel stated that in his view the developer has a choice to present all of the engineering details for the project early on or have it voted as a concept without the Board knowing all the detail required to approve or disapprove at preliminary plat. He added that he did not have everything he would need for a yes vote at preliminary plat. Mr. Gurel stated that there are more things that the Board needs to know before the preliminary plat vote, especially the opinion of ADEQ and whether or not a permit is required. Mr. Borman agreed and stated that technically the project does not need all the details tonight but this will be the only public hearing for the project. Mr. Gurel added that the public can voice their concerns at all public hearings but due diligence is served if the details are presented up front. He added that the Board would vote on the maximum impact of the development.

Mr. Gurel stated that there has been a significant change from condominiums where the POA owns all the ground to a site plan where the developer will sell plots of land that will be owned by homeowners thereby not condominiums. Mr. Symonds stated that fundamentally the only change was the proposed legal structure. Mr. Gurel and Mr. Symonds agreed that the applicant would be following the preliminary plat checklist subject to any variance requested when he returned with the replatted subdivision.

Mr. Gurel asked if the applicant has done sample digging along the road to see what may be expected when the utilities are taken through the corridor. Mr. Symonds responded that sample digging in the roadbed has not been done. He added that the test pits scattered throughout the property did give some indication of what will likely be encountered. Mr. Gurel asked the applicant if a list of variances from subdivision rules had been submitted to the Board; Mr. Borman stated that it is not required at this time.

Mr. Curtis asked the applicant to briefly state how the POA will pay for maintenance and operation of the wastewater system and the bonding necessary for the development of the infrastructure. Mr. Symonds stated that after all approvals have been obtained to build out the infrastructure; a swimming pool, viewing platform and one house would be built. He added that conceptually the POA would be set up with each resident paying 1/40<sup>th</sup> of the POA common charges and the rules filed at the time of the submission of the preliminary plat. Mr. Symonds stated that the developer would bear the cost of the POA charges for the unsold lots. He added that if ADEQ financial assurance is not required then he believes that there is no regulation that requires him to put up financial assurance for the operations and maintenance of the wastewater system. Mr. Symonds stated that the likely longevity of the system is 30 years. He added that the estimated cost of a new system per household would be an estimated \$5,000.00 and reserves should be set aside over a 30 year period but even if they didn't, it would not be a large expense for this type of home.

Mr. Symonds stated that with regard to bonding he feels that a responsible developer should not put a shovel to the ground until he is sure that funds are available to pay for the necessary phase. He added that he did not agree that there is a need to put up bonds. Mr. Knight asked if ADEQ says that you do not need to put any money up front to support the infrastructure of the wastewater treatment system are you not willing to do that. He added that he is concerned about the operation costs and is not willing to support the project conceptually if the applicant is not willing to bond it out and say that he is willing to pay for the system until the POA can take it over completely. Mr. Symonds stated that ADEQ regulations are only related to operations and maintenance. He added that the State of Arkansas has the power to legislate in relation to financial assurance for O & M and subsurface systems less than 5,000 gallons and do not require putting up financial

assurance. Mr. Knight stated that he understood but if the applicant is not willing to underwrite that financially until the POA is self supporting then he would not be willing to support the project. Mr. Symonds stated that he was willing to pay his share of the POA expenditure during the sell out process but a second step of a bond is not required. Mr. Knight stated that he did not say it was required by Law but he was saying that it was required for his vote because if things don't work out he wants assurance that it will work out.

Mrs. Stewart read from the Planning regulations, Chapter 4, regarding Plat Details and Attachments, Section 25, Evidence of Completion Required Improvements or Performance Bond to be Submitted as Separate Instrument: "Upon preliminary approval, the developer may proceed to install all required improvements and for this purpose may secure from the appropriate authorities the necessary permits; provided that if final plat approval is desired before completion of improvements, the developer shall post with Benton County, Arkansas a corporate surety bond in favor of the county, or deposit a cashier's check, or other negotiable securities or a certificate of deposit properly assigned to the county, in an escrow account or other acceptable bond. Such bond shall be in an amount sufficient to cover the cost of installation of all incompleting required improvements as estimated by the engineer, the contractor's bid, or the official having jurisdiction, with the exception of utilities that would be extended at no cost to the developer. The bond is to assure the satisfactory construction and performance of said improvements at the time and terms fixed by the Planning Board and in accordance with the regulations. The above bond will be required only for the portion for which the developer desires a final plat before completing the required improvements. Evidence of completion or satisfactory construction bond will be submitted with the application for final approval of the plat."

Mr. Symonds stated that the section which Mrs. Stewart referred to covers a situation where a developer is half way through construction and wants to sell off lots and at that point he must put up a bond. Mr. Borman stated that the Board could add it as a stipulation if it was deemed necessary. Mr. Knight stated that the regulation did not refer to maintenance and operation of a wastewater treatment system. Mrs. Stewart read from the Planning regulations, Chapter 4, Section 28, Maintenance and Operations Provision: "The responsible entity for the maintenance and operation of any building, park, equipment, pool, plantings, lawn, or other legal interests in the proposed subdivision shall be shown on separate articles of incorporation, contracts, restrictions, or other methods. The means of securing payment for maintenance and operation expenses and the method of terminating such provisions shall be stated in the creating documents, if any."

Mr. Symonds stated that he disagreed with the regulatory power of the Board to require a bond. Mr. Borman stated that is what lawyers are for. Mr. Glass suggested that the Board get an opinion from the county attorney. Mr. Gurel stated that it helps the Board to know the feelings of the developer regarding financial responsibility. Mr. Symonds stated that it also helps the developer to know what the rules are and not holding a developer to rules that are not in the ordinance because it creates uncertainty and discourages development. Mr. Ward stated that reminding the Board what a developer thinks he doesn't have to do will also create uncertainty.

Mr. Kneebone stated that if the concept is approved that is as far as it goes. Mr. Borman agreed stating that no construction can be done until the approval of a preliminary plat. Mr. Glass stated that the developer is advised to notify Staff before core samples or boring tests are done.

Mr. Symonds stated that the average size of the neighbor's homes built in the last 10 years is 3,350 feet. He added that with 19 buildable lots in his development multiplied with 3,350 feet will be 63,000 square feet of heated space. Mr. Symonds said that with respect to

heated square feet, the density is not high for the community. He added that comparing a homeowner buying a lot, cutting down most of the trees, and putting in a septic system that leaches dirty water into the soil to what he has proposed which is a development aimed to preserve the best trees, to discharge clean waste and to really do something sensitive to the topography of the lake really isn't a point of comparison. Mr. Symonds also stated that the idea of these homes being turned into rental property is very unlikely due to the cost of these homes. He added that rent that can be obtained in the Beaver Lake area is approximately \$1,200.00 and that would not be an economical proposition.

Mr. Symonds addressed the risk of flooding and pointed out that the property sits above the 1135 Corps line and the level of the lake has not exceeded 1131 feet. He added that on a FEMA map the site is determined to be outside the 100 and 500 year floodplains. Mr. Symonds stated that he has been in contact with the fire marshal and is working with the road department as well as the water authority. He said that he felt Grandview Heights was an example of poor development executed with supreme incompetence and is very different from his project. Mr. Symonds stated that failure of community septic systems is not a common occurrence. He added that apparently Sunset Bay did not contract with an approved O & M operator. Mr. Symonds stated that his project will have an approved O & M operator for the wastewater treatment system. He added that failure of the system means that the function of the system will start to deteriorate but it doesn't mean that effluent starts to immediately flow into the lake rather that the effluent is not properly treated. Mr. Symonds stated that a lot of attention is being given to this system but individual systems on Beaver Lake have no O & M requirements; the systems can fail, backup, and run across the ground to the lake and has no immediate trigger for the State to get involved like our project.

Mr. Borman stated that the applicant has made his point and the Board does not need to be lectured on septic systems. Mr. Symonds pointed out that that one needs to put into context the risks that already occur with individual systems. Mr. Ward stated that the individual system owners are not before the Board at this time. Mr. Gurel stated that he would like to see more oversight with respect to individual systems but a complete failure of an individual system at several hundred gallons per day does not have the same potential as a catastrophic failure that a community collection system has in the order of thousands of gallons per day. He added that the collection of raw sewage is achieved by pumps and pipes. He added that the failure of the lift and conveyance part of the system is the biggest cause of concern and scrutiny, not so much the state-of-the-art treatment plant. Mr. Symonds proposed that a licensed operator who lives in close proximity to the site could be retained to turn the power off at each house in the event of a forced main break until the primary O & M contractor could come and repair the line.

*Mr. Curtis made a motion to approve the Conceptual PUD, Mr. Gurel seconded the motion. The motion was approved by Mr. Cole, Mr. Curtis, Mr. Gurel, and Mr. Ward. The motion was opposed by Mr. Borman, Mr. Kneebone and Mr. Knight. The motion was passed with a vote of 4 in favor and 3 opposed.*

## **7. Reports of Planning Board members**

There were no reports from the Board.

## **8. Adjournment:**

The meeting was adjourned at 8:15 pm