

June 16, 2010
NOTICE OF REGULAR MEETING AND PUBLIC HEARING MEETING OF THE
BENTON COUNTY PLANNING BOARD

WHEN: June 16, 2010
TIME: 6:00 p.m. The Benton County Planning Board will meet to receive Public Comments on any of the proposed projects on the agenda.
PLACE: Benton County Administration Building, 215 East Central Avenue Quorum Courtroom, 3rd Floor (Suite 324), Bentonville, AR 72712

MINUTES FOR REGULAR PUBLIC HEARING

1. **Call to Order**
2. **Roll Call**

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

Staff was represented by Will Hanna, Teresa Sidwell and Karen Stewart.

3. **Disposition of the Minutes** of May 19, 2010 public hearing meeting 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. James Gately representing A.B.L.E. (Association for Beaver Lake Environment) spoke regarding the Sunset Point project. Mr. Gately stated that there are a number of red flags concerning the project's wastewater disposal plan. He added that there are a lot of assumptions made to ensure that the system remains under 5,000 gallons. Mr. Gately remarked that a permit is required from ADEQ for anything above 5,000 gallons. He added that some of the assumptions are that the homes will be summer homes and the residents will not be living there full time and the residents will not have visitors during the peak times during the summer. Mr. Gately said that the system will be pumping sewage 80 feet uphill. He stated that the system is supposed to be state of the art and the water from the treatment plant is allegedly drinkable. Mr. Gately commented that one aspect that is not state of the art is the raw sewage must go through pipes and pumped to the state of the art system. He added that the 4 day storage tank would not be sufficient if the electricity goes out for over a week as it has previously in this area. Mr. Gately pointed out that A.B.L.E. is not against development but when it is on Beaver Lake it should be done to the highest standard because the Lake provides the area's drinking water and is the economic engine for this area. He added that agencies in Little Rock cannot be relied upon to protect the Lake. Mr. Gately asked the Board to require some realistic numbers for this project.

Jon Hobson, of 8743 Stucky Lane, lives adjacent to the proposed project. Mr. Hobson stated that he has lived in the area for 5 years and was drawn here because of the natural beauty. He said that the beauty of the area could end with one

instance of improper management. Mr. Hobson commented that past failed projects have devastated the environment. He implored the Board to require construction and completion bonds. Mr. Hobson stated that the development next to the Rocky Branch marina and the Grandview Heights development had stripped the land of trees and left the community with an eyesore. He added that he did not want the Board to give Mr. Symonds "the option of packing his bags and leaving like a thief in the night, with our community destroyed, and no one to blame but ourselves for letting some smooth-talking lawyer leave another eyesore and us with no recourse."

Jim Collier of 19641 Collier Lane submitted a document to the Board with remarks concerning the Sunset Point project. Mr. Collier stated that, along with 35 neighbors who signed a petition in opposition to the Sunset Point development, he felt his point had been made, but that he wanted to highlight a few main points. Mr. Collier stated that they are concerned with the long range ramifications of the wastewater treatment system proposed in close proximity to adjoining property owners and Beaver Lake, they are concerned that the developer will strip the site and leave before completion, they are concerned about the density of the development and its effect on roads and water supplies, they are concerned about fire hazard from over-concentration. He added that above all they question the precedent set by approving the developer's requested variances. Mr. Collier stated that the project could not be fostering harmony among existing neighbors if there is a petition of neighbors that oppose the development. He read from the petition as follows: "We, the undersigned property owners in the Larue area, are opposed to the Sunset Point development due to the potential septic issues, overloaded infrastructure, and environmental damage."

Mr. Collier declared that they have consistently asked that a system of safeguards through the establishment of minimum standards be requested by requiring bonds to ensure that damage to roads will not occur, ensuring proper long-term operation of the wastewater treatment system, and a bond to ensure that the project is completed as proposed. He added that the Rocky Branch Fire Chief had moved to Illinois 6 months ago and any letter received from him would have been for the conceptual plan and would not be applicable to the preliminary plan. Mr. Collier stated that he had received the 2009 annual drinking water quality report and it was reported that the district used over 2 million gallons of water for the month of January 2010. He added that there are 508 water users consuming 4352 gallons of water per month. Mr. Collier stated that if the average is expanded for 40 new properties on a daily basis it calculates to be 5803 gallons per day. He asked how the Board can accept the developer's calculation of 4990 per day.

Mr. Collier asked the Board if it was proper to approve a preliminary P.U.D. if the developer did not own all the property proposed for the project. He stated that a waterfront property owner who resides in California had communicated by email "that no sale or contract pending is in force as of June 14, 2010."

Mr. Borman addressed some of the public's concerns. He stated that he totally disagreed with the wastewater calculations but the Department of Health and ADEQ have signed off on the project and have stated that the project does not require a permit because it is less than 5,000 gallons per day. Mr. Borman stated that the Planning Board cannot force the State to require a permit because it is not in the Board's authority to do so.

Mr. Borman declared that Mr. Collier's calculations from the water district are not entirely accurate. He added that the water district's calculations are based on low flow devices and several other things. Mr. Ward stated that at 4352 gallons per month the average comes out to be 145 gallons a day per user. Mr. Borman acknowledged that based on his experience the wastewater system is a good one and will do the job that is required of it. He added that he would prefer that the system was permitted so that all their test results are made public. Mr. Borman stated that if the other 5 homes are built that are requested for later development the developer will have to revisit this issue with ADEQ as stipulated.

Mr. Borman stated that Benton County Water Authority #5, who provides water to this facility, has said that they have the capacity for this project. He added that they do not provide fire protection as part of their water delivery and are only mandated to deliver potable water. Mr. Borman said that it is a moot point to require fire flow because there is no requirement. He added that we need to make sure that the project is adhering to the fire code requirements.

Tony Miltich of 9679 E. High Meadows Drive, Rogers stated that he has spent 14 years driving fire trucks in rural northwest Arkansas. He added that the road variance request for this project literally scares him. Mr. Miltich said that a 20-ton fire truck was not designed for gravel but rather designed for highways and city streets. He added that standards for grooved concrete are there because people have been killed.

Dan Schillinger of 8893 Larue Road stated that he adjoined the property and his home was located approximately 30 feet from the site. He added that he had concerns with home spacing and the proximity of the proposed project to his home in the event of fire.

Tom Seliga of 19753 Poverty Point Road stated that the project of 40 homes did not make sense. He added that Larue Road has 5 lakefront homes for sale now and he feared that the neighborhood would end up with a half done project and a guy from New York who doesn't care about the neighbors. Mr. Seliga said that they don't want a resort, they want neighbors.

5. New Business:

A. JP District 13 – Large Scale Development Compliance – Riverside Entertainment and Five Star H & C – 17023 Chambers Springs Rd., Siloam Springs

Tim Reed represented the project. Mrs. Stewart stated that Staff had received a copy of the hours of operation but had not received anything from the Health Department yet. She added that Starr of the Health Department had stated that portable toilets could be used temporarily. Mr. Reed stated that the septic and water were both awaiting results of testing.

- Applicant must submit Health Department septic approval to Staff.
- Water supply must be approved by the Health Department and written approval submitted to Staff.

Mr. Ward made a motion to approve the project pending stipulations; the motion was seconded by Mr. Curtis. All members voted in favor of the motion.

B. JP District 09– Large Scale Development – **BBG Holdings Fertilizer Plant**
– 10397 & 10401 Haxton Rd., Bentonville

Phil Swope of Gray Rock Consulting, Inc. represented the project. He stated that he was awaiting approval from the Health Department. Mrs. Stewart stated that the Chief Building Inspector had stated that the project must meet current code to ensure public safety.

- Written septic approval from Health Department must be submitted.

Mr. Kneebone made a motion to approve the project pending stipulations; the motion was seconded by Mr. Cole. All members voted in favor of the motion.

C. JP District 12 – Large Scale Development – **APAC-Central, Inc. Portable Asphalt Plant** – 20179 Bill Young Rd., Siloam Springs

Bob Bryant represented the project. Mrs. Stewart stated that the applicant had met all stipulations except the verification of compliance with Arkansas Fire Prevention and Safety code could not be provided until project building begins. Mr. Borman asked the applicant if they would be drilling a well. Mr. Bryant stated that if they had water at all they would drill a well.

Mrs. Stewart stated that the City of Siloam Springs had sent comments which she had forwarded onto the Board. Mr. Curtis stated that he had discussed the project with Ben Rhoads of the Siloam Springs Planning Department and that concern was expressed regarding the height of structure on this site. Mr. Bryant stated that the greatest height of any of the structures would be 60 feet because they would be using a hopper instead of a silo. Mr. Curtis asked the applicant how high a silo would be; Mr. Bryant stated that it would be approximately 95-100 feet. He added that he would cover all the requirements with the airport and make sure that their project won't cause any issues.

Mr. Curtis said that the Siloam Springs 2030 Long Range Plan designates this area as medium density residential; he added that an asphalt plant does not "go with" medium density residential. Mr. Curtis stated that, as Mr. Rhoads pointed out, the airport is already there and there is also a large chicken farm in the area - it is already a mixed use area. He added that there are homes around the project area and that the Board had received a letter from a homeowner.

Mr. Knight asked the applicant what was meant by a portable asphalt plant; Mr. Bryant stated that the project was a portable plant but they might want to replace it with a permanent plant at some point in the future. He emphasized that he was seeking approval for a permanent project. Mr. Knight declared that he would like more data if the project is eventually going to become permanent; Mrs. Stewart stated that if there are any significant changes to the project the applicant would be required to bring the project back before the Board. Mr. Gurel stated that the Board could not approve the project as a permanent plant because what has been submitted is for a portable plant; he said that it would be appropriate for the developer to bring any changes back to the Board.

Mr. Knight remarked that his only other concern is that there are residential areas in close proximity of the project. He expressed concern that Benton County does not have its own long-range plans.

Mr. Ward asked how far outside of Siloam Springs this location is; someone answered that it was about ½ mile. He then asked why the City of Siloam Springs did not use their 5 mile extraterritorial jurisdiction. Mrs. Stewart stated that it is not in the city's ordinance to regulate commercial development outside their city limits. Mr. Cole asked if any of the adjoining property owners were residential; Mrs. Stewart stated that the project location is technically part of an old subdivision called Patrician Ranch. She added that the Board is completely within their rights to require some sort of natural buffering to mitigate the impact. Mr. Gurel stated that it is hard to buffer a six story project with greenery. Mr. Gurel asked if there were any covenants for the subdivision; Mrs. Stewart replied that there were not.

Mr. Knight stated that another issue would be odors generated from an asphalt plant. Mr. Bryant stated that he couldn't say that there will be no odors but they try to minimize odor at every turn.

Mr. Curtis made a motion to approve the project pending FAA review; the motion was seconded by Mr. Kneebone. Mr. Borman, Mr. Cole, Mr. Curtis, Mr. Gurel, Mr. Kneebone, and Mr. Ward voted in favor of the motion; Mr. Knight opposed the motion. The motion was passed.

6. Old Business:

A. JP District 02—Preliminary Plat P.U.D.- Sunset Point at Beaver Lake— 8766 Stucky Ln., Rogers

Brian Teague of Community by Design and developer Garth Symonds represented the project. Mr. Borman asked if the applicant owned the property in which the project is proposed to exist. Mr. Symonds stated that land is still to be acquired in the northernmost part of the proposed development and a lot to the south is to be acquired. Mr. Gurel asked if there were any contracts to acquire the properties. Mr. Symonds stated that there were not. Mr. Cole asked if he is required to have those properties under contract. Mrs. Stewart stated that she was not aware of that being mentioned in the regulations and the issue had never come up before. Mr. Gurel stated that he knew that in the past, projects were not considered because the developer did not own the property or have a contract in force to acquire the land. Mr. Borman stated that he didn't think the Board could approve construction on someone else's property; he added that if the preliminary plat is approved it gives the developer the ability to begin improvements to the property.

Mr. Symonds stated that under the ordinance Chapter III construction plans must be presented to the Board for approval before construction can take place. He added that it could be a condition of approval that the lots be acquired. He added that in Chapter I, Section I, it states that it shall be deemed sufficient for approval of any project if the minimum standards set forth herein are accomplished.

Mr. Curtis asked if the Board would be considering the variances first; Mr. Borman stated that they would. Mr. Gurel asked, as a point of procedure, if there would be 4 separate votes on the four variances; Mr. Borman stated that there would be. Mr. Gurel then asked, as a point of order, if any of the variances were not approved, if

the developer could ask to have the project tabled and “therefore return to present a project... redesigned to be the project that’s submitted based on changes due to any variances that were not approved.” Mr. Borman agreed that the project presented to the Board was based on obtaining approval of the variances.

Mr. Borman stated he was not comfortable moving forward with considering this project - that “minimum standards” generally means on property that you own and want to develop. Mr. Symonds suggested that minimum standards are specifically set out in Chapter III in relation to subdivisions and what you have to show on a preliminary plat and it says nothing about ownership for the purposes of approval of a preliminary plat.

Mr. Gurel made a motion to proceed to consider the project, its variances and the preliminary plat contingent upon obtaining the opinion of the Benton County Attorney regarding approval for projects on land not owned or under contract to be purchased by the developer. Mr. Curtis seconded the motion. All members voted in favor of the motion.

Each requested variance was voted on separately.

Mr. Curtis made a motion to approve the following variance from Benton County street grade regulation Ch. XI Section 2: Gravel roads shall be compacted and shall not exceed 18% grade. Roads or road segments that exceed 18% grade shall be paved with concrete. The motion was seconded by Mr. Gurel.

Mr. Borman, Mr. Curtis and Mr. Ward voted in favor of the motion. Mr. Cole, Mr. Gurel, Mr. Kneebone and Mr. Knight opposed the motion. The variance was not approved.

Mr. Teague asked the Board members for feedback from those members that voted in opposition of the variance. Mr. Kneebone stated that he had driven an ambulance for many years in the area and he felt that the variance would be jeopardizing the safety of the emergency personnel. Mr. Cole stated that his concern was also that of safety and the current plan does not show any need for the variance. Mr. Gurel stated that there are no grades over 18% and so the variance is from having any textured concrete on this project.

Mr. Symonds commented that the Benton County Fire Marshal seemed satisfied with the capacity of emergency trucks to navigate the grades. Mr. Gurel stated that he remembered seeing a letter from the Fire Chief stating that the project was within the responding area. Mr. Symonds read the response from Fire Marshal, Will Hanna quoting “the local fire departments do not have the qualifications, authority, or desire to approve or disapprove a project. The sole purpose of a letter from them is to ensure they have been made aware of proposed projects. This allows them, together with my office to evaluate the project’s impact as it relates to their ability to provide emergency services. We then are better able to plan for the future with regard to staffing, equipment, training, etc.” Mr. Gurel stated that is not an approval of grades in the project not being textured concrete. Mr. Symonds stated that he thought the discussion was concerning project approval from the Fire Chief. Mr. Gurel stated that he did not understand from what Mr. Symonds had just read that the Fire Chief was giving his approval.

Mr. Teague commented that the narrow street design is to encourage safety. He added that statistics show that the wider the street, the faster traffic will travel. Mr. Teague declared that a crash with a pedestrian at 40 miles per hour will result in a fatality 90% of the time. He added that at 15 - 20 miles per hour the fatality rate is reduced to around 15%. Mr. Teague stated that there is a 17% grade on the project. He added that if the roads are to remain under 15% then they would have to bulldoze a little bit more, cut deeper, and cut more trees down. Mr. Teague explained that as designers, they are trying to be responsible instead of blindly following the codes.

Mr. Gurel stated that one of his concerns is that of safety. He added that as a rural fire department board president, he could not approve the variance in good conscience. Mr. Gurel stated that he had reached out to numerous professional fire fighters and none thought that the variance was a good idea. He added that the other objection to the variance is that when the Board approves a variance it sets precedent; he said that in the past when a variance like this had been approved, it did not turn out to be a good idea. Mr. Gurel commented that he believed that grades above 10 - 12% should be textured concrete.

Mr. Knight stated that he appreciated the gentleman that drove the fire truck and did not argue with the fact that fire trucks are not made for these conditions. He added that his second concern was that the houses are only 10' apart and this proximity could cause fire issues. Mr. Knight reiterated that fire hydrants only provide potable water and do not provide water that can put out a fire.

Mr. Curtis made a motion to approve the following variance from Benton County minimum lot size regulation Ch. XI Section 3: that minimum lot size not apply where the ratio of useable open space to buildable space exceeds 2/3. Mr. Ward seconded the motion. All members approved the variance.

Mr. Curtis made a motion to approve the following variance from Benton County building setback regulation Ch. XI Section 5: that the only restriction being that houses shall be a minimum of 10 feet from each other and not encroach onto the corridor. Mr. Ward seconded the motion.

Mr. Borman, Mr. Curtis, Mr. Gurel, Mr. Kneebone and Mr. Knight voted against the variance; Mr. Cole and Mr. Ward voted in favor of the motion. The variance was denied.

Mr. Borman stated that he opposed the variance because of fire safety. Mr. Gurel stated that because of serving on a fire department board he is aware that the county regulation of 10 foot setbacks is not enough from a firefighting perspective. He added that he was not aware of drawing water from the lake to be common practice and it is not a fast or efficient way to put out fires. Mr. Gurel commented that fire boats may be used to suppress the spread of a fire.

Mr. Teague asked if a 25-foot separation between units would be acceptable. He also asked if the Board's only concern was the separation between units. Mr. Borman stated that his biggest concern was a 10-foot separation between units. Mr. Curtis stated that density is a very important issue. Mr. Gurel added that the only other issue would be the setting of a precedent.

Mr. Gurel made a motion to approve the following variance from Benton County street design regulation Ch. XI Section 2 Table for Minimum Design Standards for Subdivision Streets: that the requirements of 0-300 L.U. Medium Density requirements for roads not apply. Mr. Ward seconded the motion.

Mr. Borman, Mr. Cole, Mr. Curtis, and Mr. Ward voted in favor of the motion. Mr. Gurel, Mr. Kneebone, and Mr. Knight voted against the motion. The variance was approved.

Mr. Gurel commented that the reason the Board is voting on these variances is because the developer has requested that the project be considered as a P.U.D. which falls under subdivision rules as varied. He added that he would submit that unless the variances are approved, we may not be looking at a PUD. Mr. Borman stated that Mr. Gurel was correct but the developer still has to adhere to the subdivision regulations. He added that he thought the Board should give the developer an opportunity to revise the variances and bring them back before the project is thrown out.

Mr. Gurel asked if the Board were to consider a project to be a subdivision, then anyone who comes to the Board can ask for variances that they want and it doesn't make it a PUD or keep it from being one. Mr. Borman stated that any deviation from a PUD preliminary plat approval must be approved by the Board but it does not go through the public hearing process. He added that with subdivision waivers from the preliminary plat approval, "they go about their business and do their thing." Mr. Borman stated that as our rules are written it is difficult to see the differences. Mr. Gurel stated that the way we treat a PUD is different and so it seems that at some point in our process the Board should be determining whether this project is treated as a PUD or not. Mr. Ward stated that he felt the determination should have been made a lot earlier than now. Mr. Gurel stated that he would like it noted in the record that the Board has never voted to approve the project as a PUD and now some of the variances have failed. Mr. Borman stated that this is not a death knell for the project.

The following stipulations have not been met.

- Board requests fire hydrant flow calculations for the site.

Mr. Symonds explained that he had contacted the water authority, the local fire chief and the engineer for the water authority and none of them have the data requested. Mr. Borman asked if he had seen that there is an ISO rating of 6 for that area. Mr. Symonds responded that Mr. Borman was correct. Mr. Borman remarked that someone must have the data and that is probably ISO. Mr. Gurel remarked that ISO would have gotten the information from the fire department. Mr. Teague stated that he thought the email said that they could provide 500 gallons per minute to fill the tanker trucks. Mr. Borman said that "they have an ISO of 6 and they do not provide fire flow so I think we have taken care of that one."

- Water extension approval must be submitted to the Department of Health.

Mr. Symonds stated that he would like to know that the project has been approved before going to that expense.

Mr. Borman stated that those are the outstanding stipulations. Mr. Gurel asked if Staff had received covenants. Mr. Symonds stated that he had not submitted covenants. Mr. Gurel stated that it would be a requirement for preliminary plat according to the ordinance.

The applicant requested that the project be tabled for a later TAC meeting.

B. JP District 11– Large Scale Development Expansion – **Horton Farms Pavilion** – 9384 Horton Farms Ln., Gravette

Randy Ritchie of Steadfast Inc. represented the project. Mrs. Stewart stated that Mr. Ritchie had met all stipulations. Mr. Knight commented that the plan does not show the septic being tied to the new septic field.

Mr. Knight made a motion to approve the project with the stipulation to correct the septic system on the plan; Mr. Kneebone seconded the motion. All members voted in favor of the motion.

C. JP District 13 – Large Scale Development Extension – **Osage Creek Pavilion** – 15082 Logan Cave Road, Siloam Springs

Tim Sorey of Sand Creek Engineering and the property owner, Greg Smith, represented the project. Mrs. Sidwell stated that Mr. Smith had submitted the receipts for adjoining property owner notification. Mr. Sorey stated that the extension request was for the use of both the north and south parcels for temporary events. He added that they would like to use the parcel across the street for parking and camping. Mr. Borman stated that parking was understandable but the applicant could not have separate events running on both parcels at the same time. Mr. Gurel asked if the Mass Gathering permit would apply. Mr. Borman stated that they would need to obtain that permit through the State Health Department.

Mr. Knight made a motion to approve the Large Scale Development extension; Mr. Curtis seconded the motion. All members voted in favor of the motion.

7. Reports of Planning Board Members

A. Discussion – Planning Board By-Laws

Mrs. Stewart stated that there was a communication issue amongst Staff. Mrs. Sidwell stated that to her recollection Mrs. Stewart had requested a copy of the ordinance from Mr. Cole. Mr. Borman stated that the discussion would be tabled until Staff could submit the ordinance to the County Attorney for an opinion. Mrs. Sidwell asked the chairman for clarification on the discussion. She added that the discussion on the agenda was concerning Planning Board By-Laws. Mr. Borman stated that the ordinance needed to get “squared away” before proceeding to the discussion of by-laws. Mr. Gurel reminded Staff to get the County Attorney’s opinion on whether or not a developer must own the land he or she is planning to develop.

B. Board Discussion – Commercial Development Matrix

Mr. Curtis stated that after a vote of the Board the matrix would be brought before the Committee of 13. He added that the State Health Department does not have a fee

structure for a mass gathering permit. Mr. Ward stated that he felt there should be a fee to cover administrative costs. Mr. Gurel proposed that the review fee for mass gatherings be the same as that for the lowest impact level of the matrix. Mr. Borman agreed. Mrs. Stewart stated that the matrix has been added to the Benton County website for the purpose of obtaining public feedback. Mr. Curtis stated that he had no problem with waiting for public feedback but in the interest of time we need to get going. Mrs. Sidwell suggested that public feedback would be helpful to the Committee of 13 and it may not be necessary to wait. Mr. Ward and Mr. Borman agreed. Mr. Borman suggested that the fee schedule be added to the matrix and forward it on to the Committee of 13.

Mr. Ward made a motion to approve and submit the matrix to the Committee of 13 including a fee structure of low, medium, and high for commercial projects and temporary events; Mr. Knight seconded the motion. All members voted in favor of the motion.

8. Adjournment

The meeting was adjourned at 7:45 p.m.