



**Benton County Planning Board
Public Hearing
Technical Advisory Committee Meeting**

October 3, 2012

6:00 p.m.

Benton County Administration Building
215 East Central Avenue

Meeting Minutes

PUBLIC HEARING:

Call to Order: The meeting was convened at 6:00 p.m. by Planning Board Chair Mark Curtis.

Roll Call: Jim Cole, Chair Mark Curtis, Lane Gurel, Starr Leyva, Vice-Chair Ashley Tucker, and Ken Knight were present. John Pate was absent.

Persons present in addition to the Board: Benton County Administrator of General Services Elizabeth Bowen, Director of Planning and Environmental Services Christopher Ryan, Planning Division Manager Rinkey Singh, Planning Coordinator M.J. McGetrick, and Planning Assistant Brenda Kilby. In the audience were Gloria Knight and Rhonda McKinney.

Disposition of Minutes: 9/19/12; Board Chair Mark Curtis stated that the minutes were in error on a statement under "Goals and Objectives" on page four (4). The passage, to be corrected, reads as follows: "Mr. Curtis stated that perhaps a citizens' committee could be brought in to help shape the document." The citizens' committee was a previously convened body. Mr. Curtis was not suggesting that a new committee be formed. Ken Knight moved to approve the minutes as corrected; Ashley Tucker seconded the motion. The motion carried unanimously, 6-0.

General Public Comment: None

Old Business: None

New Business:

Rhonda McKinney – Variance #12-206, JP District 1, 11600 Rolling Hills Dr., Rogers, AR 72756; represented by Rhonda McKinney.

Staff Comments: Board Chair Mark Curtis asked Staff to update the Board on any changes to the project application since the last meeting. Planning Coordinator M.J. McGetrick stated that Ms. McKinney's property is located in a very rural location, on a gravel road, and was not part of a conventional subdivision. She said that most of the buildings along Rolling Hills Drive were not built within the County-mandated setback. Therefore, Ms. McKinney's proposed shop building would not be a deviation from surrounding properties. Ms. McGetrick stated that the property has a steep slope on the Southwest corner. The slope prevents the property owner from having a level place to build the proposed shop. She said the orientation of the shop building is preferred, due to the landowner's fear of theft if it faces the roadway, as well as a necessity for maneuvering a horse trailer and truck down the driveway and into the shop building. She stated that the applicant would need to apply for a driveway permit to the planning office for the proposed driveway from the gravel road.

Applicant Comments:

Ms. McKinney stated that the request for a variance was based on the following hardships:

1. The topography of the lot at the Southwest corner creates a severely limited buildable space.

2. The presence of electrical lines through the center of the property limits the available buildable space.

Discussion: Mr. Curtis stated that the concern from side lot and the variance from the road setback have both been addressed, as well as the rural nature of the property. He said the topography of the lot is such as the planned location of the building is the only place to put it.

Decision: Chair Mark Curtis entertained a motion. Mr. Gurel moved to approve the project with the following stipulations:

1. Any additional development on the property, within the County-mandated building setbacks, will require Planning Board approval.
2. All Carroll Electric requirements regarding setbacks for utility easements must be met.
3. Applicant must apply for approval of a driveway permit through the Benton County Planning Department.

Mr. Cole seconded the motion. Mr. Curtis asked those present if there were any public comment. There being none, he called for a vote. The motion carried unanimously, 6-0. Mr. Curtis adjourned the public hearing at 6:13 p.m.

TECHNICAL ADVISORY COMMITTEE

Call to Order: 6:21 PM

Old Business: None

New Business: None.

Discussion: Benton County Director of Planning and Environmental Services Christopher Ryan was recognized and the Board discussed Chapter Two of the proposed draft Planning Regulations.

Mr. Ryan stated that the first provision outlines the administration and enforcement powers of the Planning Board. He stated there is also a stand-alone chapter on the Planning Board, and the Board may wish to remove this provision and put it with the existing regulation. There being no substantive comment, Mr. Ryan stated that it may be useful to leave it as is. Mr. Ryan explained that the proposed regulations combined some areas and added new ones, and some effort had gone into making significant differences, making a side-by-side comparison between the new draft and the existing regulations difficult. He stated that as such, the document should probably be presented as a new document to the Legislative Committee, and not as a revision of the existing regulations.

Section 2.2, concerns fees authorized by the Planning Board. Mr. Ryan listed the current fees as listed in the Benton County Ordinances and compared those fees to the proposed fees. The proposed changes and additions include:

1. Changing the replat fee from \$200 to \$500
2. An additional charge of \$200 for subdivision final plats in addition to the \$500 preliminary plat fee as well as the established per lot fee of \$50
3. New fees for the following applications, which have been assessed using the Large Scale Development fee structure under current regulations, but will now have their own fee structure:

- a. Minor Site Plan Review - \$100
- b. Standard Site Plan Review - \$250
- c. Major/Regional Site Plan Review - \$500
- d. Site plan review Minor Modification - \$50
- e. Site plan review Major Modification – Standard Application Review Fee
- f. Telecommunications Tower
 - i. \$100 Administrative Review
 - ii. \$200 Regular Review
 - iii. \$100 Annual Review
- g. Supplemental Review Fee - \$100
- h. Variance Fee - \$50 per variance request, up to a maximum of \$300

Mr. Ryan said that this section features upgraded fee amounts and some new fees, including a fee for variances. He noted that a great deal of staff time goes into working with variance requests; however, under the current fee schedule, variances do not require a fee. He stated that if a fee is not charged, there is no method for recouping the cost of administrating a variance. The proposal lists a fee of \$50 for each variance request, up to a cap of \$300. Mr. Tucker asked about current fees. Mr. Ryan stated that lot split fees are \$200, but that previously the fee had been \$50. Ms. Bowen said that the fee had been changed administratively, and that the ordinance had always been \$200. She requested Planning staff to research the fees for the nearby Cities and suggested that proposed fees should not exceed fees charged by a City.

Mr. Gurel asked if the Large Scale Development fees were appropriate. Mr. Ryan stated that the number of complexities and details involved in staff of LSD are high. The new fee structure has been designed to cover a portion of that expense. He also noted that the new fees for modification of a plan were to parallel the amount of work that goes into a review by staff. Currently, there are no fees for supplemental review.

Mr. Tucker suggested that each type of review be defined and placed in the definitions portion of the document. Mr. Ryan concurred. Mr. Curtis said, for example, that ARCO faced paying a substantial fee when the applicant came back to the Planning Board with a revision to its site plan, and suggested that a fee of \$50 would have been sufficient in that case. Mr. Gurel said that Planned Unit Developments (PUDs) as a category might be too broad. The PUD category covers both commercial and residential developments, whether subdivisions or single developments. Mr. Gurel said in the past, some developers had used the PUD as a way to avoid certain rules, and they were calling a development one thing when it was really something else. Mr. Ryan stated that the purpose of a PUD is to provide for developments not available in a conventional subdivision. He said that often these developments have more density and a mixed-use aspect, as well as amenities that a conventional subdivision would not have. Mr. Ryan said the language describing PUDs has been revised, in hopes of making the distinction more clear.

Mr. Ryan said staff wants to know the Board's philosophy of having the PUD. Mr. Ryan stated that if there is an underlying feeling that PUD exists because of "x," it would be good to know the Board's thoughts, because if there are other ways to provide development flexibility, staff would definitely want to do that. He asked the Board if they agreed that the PUD is designed to offer the kind of flexibility that Benton County does not want to see in a regular subdivision, that it is really designed for additional scrutiny and maybe some additional opportunities for them to be flexible, but you still want to have that opportunity to look closely at what they are trying to do, to make sure it is compatible and to make sure we work.

Mr. Ryan stated that the PUD, according to what he has been told, has been used in the past in an attempt to get around certain regulations. He said the Board certainly doesn't want that to be why PUD is there, and if there are loopholes, he needs to know specific information on what those provisions were and how people tried to circumvent them.

Mr. Gurel stated that three projects came before the Board recently that were strange varieties – not necessarily bad ideas – but they didn’t fit anywhere within the regulations, making it hard to know how to enforce. For example, if they are commercial but they are subdividing, or had retail and office included in one development. He said it should be anticipated that that type of thing will be coming to the County.

Mr. Ryan stated that the regulations need to be written so as to be more rurally appropriate, while addressing the issues that are considered vital to good development. Staff should also consider working with the Health Department in order to solve the waste water problem. He said if the Board could come up with a more rurally-appropriate development type than PUD, it would definitely be a worthwhile tool. Ms. Singh said that performance measures would create principles that the developer could adhere to, give specific guidelines, and these would provide a structure.

Mr. Ryan then began to discuss review fees, under Section 2.2 (B). He said these were essentially the same as now exist – with present language reserving to staff the right to retain consultants in appropriate circumstances, and to assess the costs of outside engineers to the applicant. He said that he has attempted to make the language a little more robust and clear. It states that review fee request decisions would only be made by a vote of the Planning Board in a regular meeting. The estimates of the appropriate fees are to be made by staff. Mr. Ryan said there may be some program funds for consultants for the same purpose. He stated that in the current budget there is \$3,000 for this purpose. He stated that in some cases the staff is asking for clarification on something and may want the applicant to foot the bill for that. However, the current regulations provide a method of having the applicant pay for outside consultants, but this is not currently applied. Mr. Ryan asked the Board whether the regulations should stay as written or make changes. He stated that if the regulation were applied appropriately, it could be a useful tool. Mr. Tucker said he agreed, adding that sufficient technical expertise is not always presented to the Staff or the Board, and if the applicant does not provide this expertise, then it must be obtained.

Mr. Ryan suggested that a supplemental deposit be required of applicants. He said the regulation lacks clarity and has weak phrasing, making it difficult to apply uniformly to applicants. He stated that if an applicant is in need of a special review, and the consultant is hired without a deposit and the application is subsequently denied, the bill for the special review may not be paid, and the County will have to pay it.

Mr. Ryan continued to discuss the document with the Board:

1. §2.2 (C), Public Hearing Requests and charges. Mr. Tucker suggested that this be clarified to read that this is in reference to a special meeting request that is not on the regular Board meeting schedule. Mr. Gurel suggested the word “special” be put there. Ms. Bowen said she was not in favor of using the word “special.”
2. §2.2 (D), Inspections and Fees – Mr. Ryan stated that this fee would be assessed for a project that is in violation or for inspections that go beyond the standard framework of regular site visits. Mr. Gurel suggested that the fee be placed on the fee schedule.
3. §2.3, Modification, Variance, or Waiver – Mr. Gurel questioned whether the 2/3 majority of the Board requirement was redundant. Mr. Ryan stated it was to clarify that if not enough Board members were present to ensure that an affirmative vote of 2/3 of the Membership would be received, the measure would fail. However, Mr. Ryan also stated the applicant could request the measure be tabled to the next meeting.

4. §2.4, Enforcement- The Board agreed to strike the last sentence in Section 2.4 (A), which read: *“Upon receiving the complaint, said official shall investigate, take necessary enforcement action, and notify the complainant of recommended action within thirty (30) business days of receipt of the complaint.”* , and to clarify the citation processes in Section 2.4 (C).
5. §2.5, Penalties – The Board agreed to strike 2.5 (C), concerning the rights of citizens to file civil suits. Ms. Bowen said that George Spence, the Benton County Prosecuting Attorney, stated that the Board might also consider an injunction with the penalties.
6. §2.6, Application Timelines, Sunset Clauses, and Reapplication – The Board added the following to the first paragraph: *“Expiration of a project timeline shall result in a default approval for the project. Extensions for project timelines may be granted by the applicant.”* Mr. Gurel asked if all projects need waiting times. Mr. Ryan said adjustments will be made and invited the Board to comment on them. Ms. Singh asked about the default approval, and Mr. Ryan said the default statement is boilerplate language in most communities in the U.S. Mr. Cole said he was not against it being stated. Mr. Curtis said it was good for the public that the clause was in there, and was in sight, and added that the Quorum Court would probably like the fact that it is included with the document. It was clarified that the timelines are established from the date of acceptance of a complete application. It was also noted that the ‘Reapplication Timeframe’ are not in the current ordinance. Discussion arose regarding the reapplication time for ‘variance’, to be reviewed further.
7. §2.7 Nonconforming Uses – Mr. Ryan said he had discussed this section with Ms. Bowen and George Spence. The existing ordinance provides a lack of clarity, creating issues with nonconformities. The Board discussed the terms “nonconforming use” and “illegal non-conforming use” And how these terms could best be applied to the problem of grandfathered uses. Mr. Ryan explained that the regulations need a provision to address grandfathered uses that not only predate the 1998 regulations but also that may be created by the adoption of these new regulations. Mr. Curtis stated that he felt this section contains concepts that could be expressed more simply. It was determined that further clarification was required in this section.
8. §2.8 Appeals – Mr. Ryan stated that this section needs clarification. He said staff is recommending that appeals go to the Planning Board if the applicant is not satisfied with administrative review, and that Planning Board appeals go to the County Judge. An option would be to have an Appeals Board that could review both administrative and Planning Board decisions. The Board agreed that it would be best to have an Appeals Board with knowledge of planning issues, and that this Board should have access to and consult with the Planning Staff. Mr. Gurel suggested that the County Attorney defend the Planning Board’s decisions before such a Board.
9. §2.9 Regulations in Relation to Municipalities – Mr. Ryan stated that this section lays out the ways in which municipalities and the County differ in regard to review. it was suggested that the reference to 18 municipalities be deleted. It was suggested that the term ‘numerous’ may be more appropriate. Mr. Gurel said many times the cities have different rules on how far beyond their boundaries they extend their planning jurisdiction. Some deal with properties located outside their incorporated boundaries, and some do not. Mr. Knight stated that the Planning Board may want to get this clarified by having each city spell out their jurisdiction on their letterhead, as a record. Ms. McGetrick said often this ends in a stalemate between a city and the County, leaving the customer in the middle. She said the boundaries must be clarified. Mr. Gurel stated that he would support getting a legal opinion on this issue. Mr. Ryan suggested the Board craft this section as they wish it to be, and then send it to the Attorney General of Arkansas for approval.

Before adjourning, Ms. Bowen encouraged members of the Board to participate in the Benton County Cleanup set for Saturday, October 13 in three locations in the County.

The meeting adjourned at 8:39 p.m.