



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

---

October 17, 2012

6:00 PM

Benton County Administration Building  
215 East Central Avenue

**Meeting Minutes**

**PUBLIC HEARING:**

**Call to Order:** The meeting was convened at 6:01 PM by Planning Board Chair Mark Curtis.

**Roll Call:** Jim Cole, Chair Mark Curtis, Lane Gurel, John Pate, Vice-Chair Ashley Tucker, and Ken Knight were present. Starr Leyva was absent. John Pate was not present for the vote on Agenda Items.

**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 Benton County Attorney George Spence, Gloria Knight, Adam Maloof, Richard Manske, and Lynda Lopac.

**Disposition of Minutes:** Mr. Cole made a motion to accept the minutes as written. Mr. Knight seconded the motion. The motion passed, 6-0.

**General Public Comment:** None

**Old Business:** None

**New Business:**

**Rockwood Point:** Informal Plat # 12-208, JP District 1, Rockwood Point Lane, Rogers, AR 72756, represented by Mr. Derrick Thomas of Bates & Associates, Fayetteville, and Mr. Mitch Weigel of Keller Williams Realty, Fayetteville.

**Staff Comments:** Ms. McGetrick briefed the Board on the Rockwood Point informal plat. She stated that the aerial photo showed that the property was originally two properties, which have been merged into one property. Mr. Gurel said the plat and the aerial photo do not agree. Ms. McGetrick said the aerial was distorted.

Ms. McGetrick described the subject property, located along Rockwood Lane, near Rocky Branch in Rogers, AR, which consists of two parcels of 10.55 acres and 1.13 acres. Presently there is a small utility shed on the property. Overall the subject parcels are wooded and undeveloped. The surrounding parcels are undeveloped or residential.

The parcel is accessed by Rockwood Lane, a County-maintained road. The proposed Rockwood Point Lane, currently a private dirt road, intersects with Rockwood Lane via an access easement and private drive, to provide access to the proposed lots. The applicant wishes to subdivide the two current parcels with a combined acreage of 11.48 into five lots with four lots equaling 2.29 acres and one lot equaling 2.32 acres. The applicant proposes to build five single family homes of no less than 1800 sq. ft. No commercial uses are proposed on the property.

Ms. McGetrick took the Planning Board and the audience through the Informal Plat Regulations, and interpreted them to apply to the current project being considered by the Board:

**Road Standard:**

The applicant has provided a road detail plan indicating the following:

1. A concrete hard surfaced road
2. A 50' right of way
3. A 16' cleared roadway
4. A cleared cul-de- sac 75' in diameter
5. A 50' right-of-way is required for the entire length of the road. A section of the proposed road does not meet this requirement.

**Access:** The Regulations state, "Under no circumstances shall an access easement or private drive be allowed to serve as a private road for an informal plat subdivision." Therefore Ms. McGetrick asked the Board to please note the following:

1. The existing access easement identified on the plan dated August 8, 2012, which is part of Lot 1 of Randolph Point Subdivision cannot be incorporated into the length of a potential private road. Staff conferred with Benton County Attorney Mr. George Spence in regard to the access issues surrounding the property. Mr. Spence stated that the current access easement granted across Randolph Point Lot 1 cannot be used as a bridge between the existing private roadway and the proposed private road on the subject property.
2. In order to gain access to the proposed Lots, the applicant must provide a contiguous roadway to each lot. This may be achieved by combining the existing Private Roadway, the area now dedicated as access easement over Lot 1 of Randolph Point and the existing private driveway. The applicant has agreed to dedicate the entire length as a Public Road (future Rockwood Point Lane) that will be privately maintained as shown on the Informal Plat.
3. In order to incorporate the existing access easement into a continuous private road connecting the existing private roadway and the proposed private roadway, the land on which the existing access easement sits on Randolph Point Lot 1 must be separated from the original Lot 1 and then incorporated into the proposed informal plat subdivision, Rockwood Point. In order to complete this requirement the following steps must be accomplished;
  - a) Lot Split: In order to complete a lot split a replat of the Randolph Point Subdivision must be completed per Chapter 8 Section 1 which states, "Any lot split within a platted subdivision shall come under REPLATTING in Section 3." A replat requires the following;
    1. A revised final plat of Randolph Point showing the adjusted property lines and newly created lots
    2. Signatures of all property owners within the Randolph Point Subdivision
    3. The applicant is required to submit a separate application for a lot split. This split must be completed in order to separate the land on which the current access easement sits from the existing Randolph Point Lot 1 thus creating two new lots in Randolph Point, Lot 1 and Lot 1A
  - b) Incorporation: A lot line adjustment indicating the removal of the newly created Lot 1A from Randolph Point Subdivision and the incorporation of said lot into Rockwood Point Lot 1. A revised copy of the Rockwood Point Subdivision should show the adjusted property line incorporating the newly formed lot 1A into Rockwood Point as part of the proposed Lot 1.

**Waivers:** The applicant requests three (3) waivers;

1. Road grades in excess of 15 percent are not permitted under the current regulations. The applicant requests a waiver for a grade of 24.93 percent due to the existing grade and topography of the site.

2. The current regulations require a 50' right-of-way. The existing Court Ordered Roadway and Access Easement have a right-of-way that is 30' in width.
3. The applicant's proposal to acquire part of Lot 1 of Randolph Point Subdivision requires a replat application. The applicant is requesting a waiver from this provision. Should this provision not be granted applicant will be required to seek replat of Randolph Point.

**Replat:** In order to complete a lot split a replat of the Randolph Point Subdivision must be completed

**Incorporation:** A revised copy of the Rockwood Point Subdivision should show the adjusted property line incorporating the newly formed lot 1A into Rockwood Point as part of the proposed Lot 1.

**Staff Recommendations:** Ms. McGetrick said the Planning Board may incorporate the following stipulations and recommendations in a decision regarding the Informal Plat Application for Rockwood Point.

**Waivers:**

1. Staff recommends that the Board consider approval of the waiver regarding grade as both the Roads Department and the Fire Marshall's Office have recommended approval of the proposed road with the stipulation that the road be hard surfaced in order to allow emergency vehicles access to the property.
2. Staff recommends that the Board may wish to consider approval of the requested waiver to the required 50' right-of-way as a 50' right-of-way is not feasible at the intersection of Rockwood Lane and the proposed Rockwood Point Lane.
3. In regard to the replatting waiver request Staff feels that the replatting section of the current Benton County Planning Regulations is prohibitive. This particular case is unique as to circumstance and the split could be considered de minimis and presents no negative ramifications to the Randolph Point Subdivision other than facilitating a development that would otherwise be difficult to provide legal access to.

**Stipulations:**

1. **Environmental:** If disturbance of the road and water line improvements creates over one acre of disturbance, submit SWPPP documents for permit from ADEQ. Submit copies of SWPPP to Planning office. Inspections shall be carried out by County for land disturbance per SWPPP and county ordinances.
2. **Access:** The existing property access is not permitted under the current Benton County regulations. In order to extend the currently existing private roadway across the existing access easement on Randolph Point Lot 1 the following should be completed;
  - a) Replat of Randolph Point Subdivision
  - b) Revised plat of Rockwood Point incorporating newly formed lot 1A
  - c) Approval of newly extended road by Benton County 911 addressing
3. **Roads:** The applicant should contact the owner of Randolph Point Lot 1 stating that they are aware of the location of the proposed road Rockwood Point Lane and its location in relation to their property.
4. **Fire:** The Board may wish to consider the following stipulations recommended by staff in regard to fire and emergency access and safety;
5. A staging area along Rockwood Point Lane wide enough to allow emergency vehicles to pass one another
6. **Septic:**
  - a) State Health Department approval of septic and water extension plan
  - b) Approval of the water extension plan by the state health department.
  - c) Provide approval from Benton County Rural Water District #5 for water extension plan.

**Additional Considerations:** Ms. McGetrick stated the Board may wish to consider additional comments as follows:

1. That the property owner shall note that Lots 1-5 (inclusive) may experience delay in emergency response.
2. That lots lying within a floodplain may require Flood Plain Development permits before construction can commence on the property.
3. That all standard conditions shall apply to any granted approval.

**Discussion by the Board:**

The Board was concerned with the grade of the roadway, which is 24.93 percent at its steepest. The Board asked about the length of the portion of the road that was more than 10 percent grade. A review of the road plan showed that approximately 700' of the proposed road would have a grade of 10 percent. The plan also showed that no curbs and gutters were proposed. The Board was also concerned about the quality of the road, including the width and whether it is 4-inch concrete with curb and gutter, and whether the surface would be textured. Another concern involved drainage, due to the grade and elevation of the road. Ms. McGetrick stated that the drainage issue was reviewed along with the road plan by Cindy Jones with the Road Department, and was approved.

The applicant has requested a waiver from the 50' width requirement. County Attorney George Spence stated his opinion that the roadway would be established as a Court-ordered public road, not one that is maintained by the County, but one that allows public access. He expressed concern that the County Judge would approve the roadway at 30' in width. Board Chair Mark Curtis also expressed concern about the waiver for the replat requirement. Mr. Curtis stated that the Board should consider the waiver very carefully before voting on it, as it would have ramifications down the road and may set a precedent. Mr. Ryan explained that the requirements for a replat of a subdivision after a lot split are to obtain the signatures of all landowners within that subdivision, as an approved subdivision is essentially a contract with the landowners. Splitting a lot within that subdivision changes the character of the subdivision, and could affect the other properties within it both aesthetically and in value. Mr. Gurel asked how many property owners would be affected and would need to sign off on the replat, should the waiver be denied. Ms. McGetrick said that 24 property owners would need to sign off on the replat. Mr. Ryan stated that this was the only opportunity for the Board to stipulate changes to the submitted plat; the final approval would include the Board reviewing the outcome of those requested changes. No further changes could be requested after approval is given.

Mr. Knight said he was concerned that the Board had not heard from the owners of lots 3, 4 or 5, and would be interested to know how this access would impact their properties. Mr. Cole also voiced concerns regarding how the requested waivers would affect landowners in the subdivision.

County Attorney George Spence stated that as the regulations currently stand, the developer could put the roadway in to the property, but they could not subdivide it without a replat or a waiver of the replat requirement. He stated that other jurisdictions do not have the same requirements that the County has on this issue, and that he believes some discretion should be allowed and that perhaps the regulations should be amended or rewritten to allow for more discretion on the part of the developer without a requirement to go through a replat. Mr. Spence stated that the current regulations are preventing people from developing their. Mr. Spence said the change being made to the subdivision was not a material change. He said that if the Board wished to grant a waiver of the replat requirement, the Board should be specific as to why they are approving the waiver.

**Applicant Comments:**

Mr. Weigle stated that he had walked the property with Jerry Oliver, Rocky Branch Fire Chief. Mr. Weigle stated that he was told the grade would not be a problem as long as the roadway was wide enough for two trucks to pass and the road was surfaced with textured concrete. Mr. Thomas stated that he wasn't here to discuss the design of the road, but whether anything above a 15 percent grade would be allowed by the County. Mr. Tucker asked the applicant to describe the hardship that is behind the requested waivers, and what the applicant has done to overcome those hardships. Mr. Thomas replied that due to the terrain, there

is no other option for ingress and egress through the property, and the planned roadway is the best design for the property. He stated that there was no way to flatten the property out.

**Public Comments:**

The public comment concerns focused on notification and noise nuisances. Mr. Richard Manske, a resident and adjacent property owner, felt that the noise level associated with the proposed homes at the location would create a nuisance. Mr. Manske stated he felt that the applicant had cleared a road which he believed in fact belonged to Carroll Electric.

Mr. Richard Manske of 8009 Farrah Lane, Rogers, AR stated the following;

I've lived there for about 30 years. My wife and I bought the property because it was a peaceful lake and I love to fish. I have spoken with the owners who bought that land I don't like what I am hearing. They have a road through there which is an electric company road. No one can use a road they have put in for the electric company. These people now have a road. Right up against my fence. Not far from my home. They butchered it up, rerouted it and plowed out beautiful trees. The Corps of engineers got after them for bulldozing Corps property. They have to pay for and replant those trees that they destroyed on Corps property. People in the area were not notified. I just found about this meeting. I did not receive a letter. There are four wheelers, going up and down that road like gang busters. I'm just disappointed in what is happening over there. Am I just wondering if you all knew these are cabins, not homes? How would you like 5 or 6 cabins adjacent to your home? It is all very troubling to me. I do love the peace and quiet of the lake. So I just wanted to voice my opinion.

**Decision:**

First, the Board voted on the proposed waivers:

1. The applicant requested a waiver from Chapter XI, Section II, of the Benton County Planning Regulations in regard to road grades of over 15 percent.

**VOTE:** Mr. Gurel voted to approve the waiver as proposed. Mr. Knight seconded the motion. Members Jim Cole, Ashley Tucker, and Mark Curtis voted to approve the waiver. Members Lane Gurel and Ken Knight voted to deny the waiver. The waiver passed 3-2-0.

2. The applicant requested that the requirement for a 50' right-of-way be waived for the portion of road starting at Rockwood Lane and extending only to the Rockwood Point property line.

**VOTE:** Mr. Knight moved that the waiver be approved as proposed. Mr. Tucker seconded the motion. The motion passed unanimously 5-0-0.

3. The applicant requested a waiver from Chapter VIII, Section 1, which states, "Any lot split within a platted subdivision shall come under REPLATTING in Section 3." The applicant is required to complete a lot split and subsequent replat due to the provisions of Chapter VII, Section 4 which states, "Under no circumstances shall an access easement or private drive be allowed to serve as a private road for an informal plat subdivision." In order to complete a lot split of Randolph Point Lot 1 and remove the newly created lot from the subdivision a replat must be completed. The applicant requests the requirement for a replat be waived.

**VOTE:** Mr. Cole motioned to approve the waiver as proposed. No second was provided. The motion was not granted due to the inability of the Board to cast a vote on a motion due to the lack of a supporting second.

Second, the Board voted on the proposed project:

A motion was made by Mr. Gurel to approve with the following stipulations, the Informal Plat Application and plat submitted by Derrick Thomas on behalf of Rock Harbor LLC (**Case No. 12-208**) under Chapter VII,

Informal Plats of the Benton County Planning Regulations as per plans revised through September 27<sup>th</sup>, 2012. The motion was seconded by Mr. Tucker. The stipulations determined by the Board are as follows;

1. If disturbance of the road and water line improvements creates over 1 acre of disturbance, submit SWPPP documents for permit from ADEQ. Submit copies of SWPPP to Planning office. Inspections shall be carried out by County for land disturbance per SWPPP and county ordinances.
2. The existing property access is not permitted under the current Benton County regulations. In order to extend the currently existing private roadway across the existing access easement on Randolph Point Lot 1 the following should be completed:
  - a) Lot split of Randolph Point Lot 1
  - b) Replat of Randolph Point Subdivision
  - c) Property Line adjustment incorporating the newly formed Lot 1A into the Rockwood Point proposed Informal Plat Subdivision
  - d) Revised plat of Rockwood Point incorporating newly formed lot 1A
  - e) Approval of newly extended road by Benton County 911 addressing
3. The applicant should contact the owner of Randolph Point Lot 1 stating that they are aware of the location of the proposed road Rockwood Point Lane and its location in relation to their property.
4. The proposed road be constructed to county standards and additionally that it be paved the entire length and that that it would be textured concrete on the portions over ten percent
5. The applicant should revise the plat to show a staging area along Rockwood Point Lane wide enough to allow emergency vehicles to pass one another
6. The applicant shall provide State Health Department approval of septic and water extension plan as well as approval of the water extension plan by the state health department. The applicant should also provide approval from Benton County Rural Water District #5 for water extension plan.
7. The applicant incorporate additional considerations as follows;
  - a) That property owner shall note that Lots 1-5 (inclusive) may experience delay in emergency response.
  - b) Lots lying within a floodplain may require Flood Plain Development permits before construction can commence on the property.
  - c) All standard conditions shall apply to any granted approval.
8. The County Judge should review the project to determine if the County Road Standards apply to the proposed road, Rockwood Point Lane, in regard to the 15 percent grade requirement. The County Judge should also review the proposed waiver in regard to the road grade.
9. The applicant shall fund a study provided by a County retained engineer in order to determine to what standard the proposed Rockwood Point Lane, should be constructed to.

The motion carried by a vote of 4-1 resulting in an approval of the application by the Planning Board. Members Ken Knight, Ashley Tucker, Mark Curtis and Jim Cole voted to approve the project and Member Lane Gurel voted to deny the application. The Public Hearing adjourned at 8:17 PM.

#### **TECHNICAL ADVISORY COMMITTEE**

**Call to Order**

**Old Business:** None

**New Business:**

Mr. Chris Ryan led the continued discussion on the proposed changes to the Benton County Planning Regulations, beginning with Chapter 4, "Definitions."

Mr. Ryan explained that the definitions are coded with symbols to explain which regulations they refer to:

- Floodplain, ☔ Stormwater, ■ Telecommunications, ▲ Wind Energy

The definitions begin with General Rules for Construction of Language, followed by a numbered definition section and an alpha definition section. Mr. Ryan asked the Board if they had comments on any of the definitions, and stated that most of those are existing definitions and not changed. Additions have been made. The following discussion ensued:

1. Mr. Knight said he had a question regarding Section 23, and Total Extended Height. He questioned the inclusion of the words "blade tip." Mr. Ryan explained that the section was referring to a blade on a wind turbine. After a discussion, Mr. Ryan stated that he would add another definition for towers, generally, and amend it to include all types of towers.
2. Mr. Curtis asked regarding "functionally dependent use," under "F." He questioned what it meant; Mr. Ryan said it was an existing definition that deals with floodplain regulations.
3. Mr. Curtis stated that under "Garbage," the word "putrescible," should be simplified. Mr. Ryan agreed.
4. Mr. Curtis stated that under Open Space, the word "lakeshore" should be changed to "lakeshore." Mr. Ryan agreed.
5. Mr. Curtis stated that there was no definition for the word "may," although there was one for "shall."
6. Mr. Ryan asked the Board if they desired to remove the minimum lot sizes and number of splits from the lot split definition. He said as long as each lot has access and road frontage, it might be good to allow property owners to do what they want.

The discussion continued with Chapter 5, "General Requirements of Development." Mr. Ryan said he wanted to put the general requirements into one section so the information would not have to be repeated in other sections of the document. The following discussion ensued:

1. Mr. Ryan stated that if a property were not single family or agricultural, it would be subject to a site plan review.
2. Mr. Ryan suggested that Section 3, "Variation Permitted," be removed, and that Section 4, "Recording Plats," be moved to the subdivision chapter.
3. Mr. Ryan suggested that under "Lot Size" in Section 4, instead of allowing a half-acre non-residential lot, it be changed to allow only one residence per acre instead of the two primary residences on residential unplatted land.
4. Mr. Curtis and Mr. Gurel said Section 5.5, "Accessory Uses and Structures," should be referenced in the definition section as "prohibited development." Section 5.6 may be moved to the Road Plan.
5. Mr. Curtis and Mr. Gurel stated that performance standards for noise may be deleted, as the County does not have a noise ordinance.
6. Mr. Curtis suggested that it be noted that "an ability to meet the mitigation measures will deem the development as incompatible."
7. Mr. Gurel stated that under "Performance Standards" in Section 5.7, the protection of Beaver Lake as an environmental resource should be noted.
8. Under Section 5.9, B 1 (c) "Public Hearings," under "Procedures," and "Notice for Public Hearing," that the applicant be required to post public hearing signs on each street frontage of the property, instead of the "case manager."
9. Mr. Ryan stated that he would have County Attorney George Spence examine this portion of the proposed regulations for clarity on standing.

Before adjourning, the Board agreed to meet on October 24, 2012 at 5 PM in the Quorum Courtroom to finish discussing the proposed regulations.

The meeting adjourned at 9:35 PM

