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Benton County Planning Board
Public Hearing
Technical Advisory Committee Meeting

2018 JAN 10 PM 12:38
TERRY MAIENSCH
CLERK
BENTON COUNTY, AR

December 20, 2017
6:00 p.m.

Benton County Administration Building
215 East Central Avenue, Bentonville AR 72712

Meeting Minutes

PUBLIC HEARING:

Call to Order: The meeting was convened at 6 p.m. by the Planning Board Chair, Bob Bracy.

Roll Call: Bob Bracy, Sean Collyge, Ron Homeyer, Terry Maienschein, Stephen Torrez, Ashley Tucker and Rick Williams were present.

Staff present: John Sudduth - Administrator of General Services, Kevin Gambrill – Director of Planning, Taylor Reamer – Planning Division Manager, Derek Linn – Senior County Planner, Tracy Backs – County Planner, Glenn Tracy – Building Official,

Public Present: 80 people signed the sign-in sheet.

Disposition of Minutes: December 6, 2017

Mr. Tucker motioned to approve the December 6, 2017, Planning Board Meeting minutes. The motion was seconded by Mr. Maienschein. The motion carried 7 – 0.

General Public Comment:

Mr. Andrew Curry, attorney, Watkins Law Firm, Rogers made comments pertaining to Board's intent to re-open the public comment portion of the Old Business item 'Simmons Site Plan Review'.

Old Business –

- I. **Simmons Processing Plant, #17-296, 9802 South AR Highway 59, Gentry; 15-07463-000, 18-14563-000, 18-11667-000**

Representative: David Jackson, 603 North Dogwood Street, Siloam Springs

Staff gave a presentation on the Simmons Processing Plant, #17-296, 9802 South AR Highway 59, Gentry; 15-07463-000, 18-14563-000, 18-11667-000

Motion by Mr. Tucker to Reopen the Public Comment, Seconded by Mr. Torrez:

Approved 7 – 0

Mr. Jackson made statements concerning site selection and various aspects of selecting this specific property to open the new processing plant.

Planning Board members spoke with the applicant and the applicant's consultants concerning aspects of the revised site plans.

*Multiple members of the audience spoke on the project, please see Planning Board files for additional information. *

Planning Board Members asked questions concerning the exterior materials to be used on the new facility.

Mr. Jackson stated the majority of the facility will be pressed concrete and glass.

Mr. Bracy asked for clarification of the sewerage utility service and the construction of the new Decatur sewer plant.

Mayor Tharp stated that the City has current Ordinances in place to regulate the allowable part per unit intake of sewerage from the Simmons plant and those Ordinances will continue with the new plant. The new plant is currently funded and proposed to be construction within 12 months.

Mr. Tucker asked about the sludge disposal from the on site treatment plant for the Simmons Plant.

Mr. Seth Walters stated that Simmons has a third party contractor handle all sludge disposal from the site.

Andrew Curry, attorney, 1106 West Poplar Street, Rogers

John Faulkenberry, 309 South Collins Avenue, Gentry

Teresa Lowry, 801 Cherry Avenue, Gentry

Elaine Ball, 577 Parks Circle, Gentry

Michael Scroggin, 18032 Little John Road, Decatur

Jim Gittlein, 17222 Little John Road, Decatur

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Kathy Scroggin, 18032 Little John Road, Decatur

Crystal Gann, 1302 Poplar Drive, Pea Ridge and 21758 Gann Road, Gentry

Jimmy Roberts, 10844 Highway 59, Gentry

Susan Roberts, 10844 Highway 59, Gentry

Cheryl Ullrich, 16694 West Brigance Road, Gentry

Mr. Bracy asked for clarification on the volume of product to be processed in the facility.

Mr. Jackson stated a 16% increase in the total number of birds. Within a three-year timeframe, the plant will expand operations within the plant to further process product on site which could increase total employment to over 2,000 staff.

Mr. Bracy asked about odors exiting the site.

Mr. Jackson stated the plant will be designed to meet all requirements for odor scrubbers.

Mr. Tucker stated the County Regulations provide avenues for the Board to add conditions as necessary for a given project proposal. One option being to ask for a Landscaping Bond and/or Utility Bond for the project at some percentage of the total installation cost and the option to designate truck routes.

Mr. Tucker stated he would like to add a consideration to the conditions listed within the presentation that a Landscaping Bond in the amount of 25% of the value of the landscaping to replace any plants that die.

Mr. Tucker stated the Board has generally accepted a contractor's value of installation for the amount to base the Bond.

Mr. Tucker stated the additional condition on this approval would include the submittal of a Landscaping Bond in the amount of 25% of the total value prior to issuance of a Building Permit. The life of the Bond would be 12 months from the time of Occupancy. *This becomes Conditions number 7.*

Mr. Bracy asked if the general land use in the area was agricultural.

Staff made reference to the general uses in the area as agricultural and single family residential.

Mr. Bracy asked if waste from the processing plant and waste from poultry houses are the same.

Mr. Jackson stated the waste from each facility are different and regulated by the State.

Mr. Bracy asked for clarification on the Traffic Study.

Mr. Jackson stated that Simmons provided a letter from the AR DoT in agreement that turning lanes and signalization would be installed.

Mr. Bracy asked if the State highway improvements would be completed by the time the plant would be operational.

Mr. Jackson stated the agreement between Simmons and AR DoT details the installation of turning lanes, but the signal would not be installed immediately.

Multiple questions stemmed from the Traffic Study analysis concerning funding, signalization timing, and permitting required by AR DoT.

Mr. Williams stated that it is not feasible to assume that the existing highway conditions would handle the additional traffic from the development, therefore the State's turning lane improvements would have to be concurrent with the development of the processing plant.

Mr. Jackson stated that AR DoT has assured Simmons that the turning lanes would be completed prior to operation of the plant.

Mr. Gambrill read Planning Regulations relating to the Board's acceptance of the Hwy 59 or Y City Road as primary access.

Mr. Tucker stated he agrees with the traffic engineer that prepared the Traffic Study that with a development of this size, utilizing a lower function class would not be feasible with the amount of truck traffic entering and exiting the site.

Mr. Tucker made a motion to approve the project with conditions (#1-7) as discussed, including the items listed within reports/presentations and the additional condition concerning Landscaping Bonding at 25% of the total value to be submitted prior to the Certificate of Occupancy and to last for a period of 12 months.

The motion was seconded by Mr. Collyge.

Approved 6 – 0 – 1 (Mr. Homeyer abstained.)

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New Business – Items for Public Hearing:

JAMES CLARK
CO. & PROBATE CLERK
BENTON COUNTY, AR

**I. Easley Setback Variance, #17-293, 8654 Low Chaparral, Rogers;
18-03379-000**

Representative: Jeff Easley, 8654 Low Chaparral, Rogers

Staff gave a presentation on the Easley Setback Variance, #17-293, 8654 Low Chaparral, Rogers; 18-03379-000

Mr. Bracy: Do you have anything to add to that, sir?

Mr. Easley: Just a little bit of background. There has always been a retaining wall here for at least 30 years. It's always been within 10'. The purpose of that retaining wall is basically to stabilize the slope which approaches 100 percent. High Chaparral is about 9' on average above Low Chaparral. Those roads are necessary for access for four neighbors, of which I am one, to access either their home or a shared dock in the case of three of us. So, there has always been a retaining wall here. It just happens to be on my property. You have to have a retaining wall there if you are going to hold back the slope so High Chaparral can exist and you can have the access through Low Chaparral.

In February of 2015, I went to all three of the other property owners and told them that we wanted to improve the access in front of my house because it runs right in front of my house on Low Chaparral for all. We wanted to take that wall and move it in west a little bit to stabilize it. The old wall was built out of old railroad timbers, landscape timbers, so it was deteriorating. I was concerned about building a new house in there to have that deteriorate and have erosion problems. Everyone agreed and we built it. I am apologizing that we didn't know that there was a variance required. I was actually in the middle of another variance. If I would have known that and I think the group at the Planning Office can tell you that there was some confusion on the regulations about whether or not a variance was needed. I think there are even some steps being made to clarify the regulations. So, we weren't trying to get away with something.

Lastly, this wall is for the benefit of all four neighbors. I agreed to pay for it. Technically through the easement we could have all shared in the cost of

replacing this wall and making it better. I wanted to make sure that we had a well-engineered wall. I am a civil engineer by training and understand this stuff. I wanted to make sure that it was well designed and built so that it wouldn't have any trouble in the future. So, it's to the benefit of all of us. In fact, it holds up my neighbor to the west of me and retains the majority of his front property. You have a 45-degree slope so you have the problems that that would cause if there wasn't a retaining wall there.

Everything was fine for two and a half years and then there was some concern of my neighbor. You will hear from them shortly I am sure. This retaining wall is well designed by Greg Bone. He did a lot of work on our house as well. Being a civil engineer, I made sure that that was correct. The wall is on my property. Technically, why does it even have to be on my property? The wall is required to support High Chaparral and Low Chaparral so we all have safe access and easement through each other's property. It wasn't an issue for two and a half years but now we will see what all the issues are.

Public Comment:

Mike Bearden, attorney, 1603 South 25th Street, Rogers

I represent doctor and Wendy Bicak who are the people that live immediately west of Mr. Easley. The truth of the matter is, until I called the Planning Board officials, no one ever asked if he needed to have a variance. There was a retaining wall there made of railroad timbers and landscape timbers which looked pretty good and went along with the landscaping of the property. Now we've got this wall and we have pictures. It totally changes the way the property looks. It's our position that the landscaping timbers were not deteriorating to the point that it was causing an issue.

The main thing I want you to consider is, there is a 10' setback requirement. This is not preservation of a wall. It's letting him build on without any permission. Not only was the wall built without any request for a variance, he also removed a bunch of vegetation in there which also helped maintain the soil there so it wouldn't be running all over the place. You can see the bushes there now (*in the photos*). My clients put those in there just recently. They were never asked by Mr. Easley putting in the concrete wall. Quite frankly, I hope it doesn't go to this point, but we believe that the footings actually encroach on our property which would be another issue. That's something I think you need to consider. That's all I have to say. Both of my clients are here and I think at least one of them would like to make a short statement as to why they are

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opposed to it.

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A.D. Bicak, 8665 High Chaparral, Rogers (the western neighbor to Mr. Easley)

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Before this building project began and I can see on the picture on the screen, there was a wall that was there. Unlike the summary that was given before Mr. Easley came up to speak, the wall was not in the same position. The wall was moved. The wall was moved from as small of an amount as 3' to as much as an amount as 11' in order to shift it over. The wall that was there, was not ranging between 2' to 9'. It was approximately 3' to 3-1/2'. I have pictures. None of those were listed. I presume somebody would want to see it because it is relevant. (Mr. Bicak hands Mr. Reamer the photos.)

I came home from work on May 8, 2015, to a bull dozer having bull dozed Mr. Easley's bushes but the bushes that were on my property. And the bull dozing continued. As mentioned on the summary statement, on May 20, twelve days later, there was a meeting in this very room that I came to where a variance was requested for the northern side of the house. The digging had already begun on the western side of the house. Over the next few months, the wall was completed to its current stage. There was never a clear answer given about the reason why something that had been in place since the mid 1990's suddenly was not adequate to maintain the road. We were having no problems with erosion under our road, no cracks in the concrete, there was nothing wrong. The current visible part of the wall goes 2-1/2" to 3-1/2" from our property line. The digging far exceeded into our property.

One of the reasons why it was hard to be very specific with our disagreement was that in the process of the reckless digging, the key four corners property pin was removed. Only after I paid for a survey to define where the property is doing we even know that the wall was .2 to .3 feet from the property line. That is why it is an issue now. There was never a survey. The survey that you had to use to explain his house construction had to put a small tiny blue box where his house was. So, you were using my survey. He never elected to purchase a survey before beginning the construction. His lot is 2.4 times the size of my lot. But he can't manage to stay in his own property. If anyone has questions for me, I have answers. Feel free to ask me questions.

Mr. Tucker: Were any of these photographs taken before the work started?

Mr. Bicak: Yes, the first one was a beautiful picture of the snow on Beaver Lake. There is no erosion to show you.

Mr. Tucker: There was quite a bit of erosion. I believe it's *(the photo)* that Derek *(Linn)* is holding.

Mr. Bicak: That's after the bull dozer came and eroded it with a big scoop. That erosion happened in about 30 seconds.

Mr. Tucker: Okay.

Mr. Torrez: Am I correct to assume that your neighbor never talked to you about building the wall prior to beginning construction?

Mr. Bicak: He spoke in vague generalities that he was going to build a home and he needed to make sure that he could have a good road. That's his property. Occasionally, he mentioned to some of the other neighbors that he was going to use that for parking.

Mr. Maienschein: There's a landscape block/retaining wall to the north of this.

Mr. Bicak: Are you meaning behind the port-a-potty?

Mr. Maienschein: Yes. That kind of continues on down.

Mr. Bicak: Yes. That's a combination of a new wall that was built once the construction started on this wall. There may have been some erosion down there but not where this is.

Mr. Maienschein: Is that built on the property line as well?

Mr. Bicak: That is not built on my property line. It's built on probably somebody's property line. They are not here.

Mr. Tucker: I just want to clarify the Board's role. We are not mediators or arbitrators. We are not dispute resolution people.

Mr. Bicak: Sure. But you are supposed to follow the by-laws as they are listed.

Mr. Tucker: That is correct. One of those by-laws is that we offer you three minutes; so, be clear of that.

Mr. Bicak: So, are you telling me to go sit down?

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Mr. Tucker: No. I am not telling you to sit down. I am just saying that we are not here for dispute resolutions. If there is something that you are asking us to do, then we would like to know what it is.

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CO. & PROBATE CLERK
DEWITT COUNTY, AR

Mr. Bicak: I am asking you to declare that this wall is what it is...illegal.

Mr. Tucker: So, you are wanting us to have him tear it down? Be more specific.

Mr. Bicak: Yes. If he had asked to put this wall there, in the way that the by-laws state, and asked for approval, would you have given approval for this wall to be put 2-1/2" from the property line? Or would you have asked more questions instead of coming in and doing it and then asking for forgiveness later.

Mr. Tucker: Thank you. That's perfect.

Mr. Bracy: Ma'am, did you have a comment that you'd like to make?

Mr. Bicak: No thank you.

Mr. Bracy: Did I understand that there was a variance issued?

Mr. Reamer: It was for the home, not specifically for this retaining wall.

Mr. Torrez: So, the retaining wall was not included in the home plans?

Mr. Reamer: Correct.

Mr. Bracy: When was this retaining wall built?

Mr. Easley: Actually, before. We started May 1st.

Mr. Bracy: So Low Chaparral was there before the home was built?

Mr. Easley: We have owned this property since 2009. We had an existing home there. We tore down most of that and are rebuilding a home. So, the road has been there for about 30 years. High and Low Chaparral. My particular property was purchased for development in 1997. I purchased it from Mr. Dunn in 2009. But, yes, that road passes right in front of my residence. Part of the issue that we always have is that any time guests showed

up, delivery trucks, maintenance, or whatever and they parked in front of my house, it made it very difficult to get around that area.

A few points of clarification if I could: I sat in the Bicak's kitchen in February of 2015 and went over this very specifically about this retaining wall. My other two neighbors can verify that I spoke with them within days if not that same day with them as well. So, I was very up front, very clear about this. To paraphrase Dr. Bicak, he said, "*Well, it sounds like a good idea to me.*" They appreciated the fact that getting by anything that was parked in front of my house was pretty difficult.

Secondly, I did have a survey done before I started all of this. \$1,500 topographic survey completed February 26, 2015. So, I knew exactly what all the elevations were. It was a pretty complex survey. This whole property that we live on is a very steep slope approaching anywhere from 35 – 45 percent all the way down to Beaver Lake. You need to be careful building stuff there. You need to make sure it is retained.

I listened to the Bicaks. We want to be good neighbors. I have gone over backwards and helped them out in so many ways. I was at their house on day one. I realize that you guys don't do conflict resolution so I won't go into it that much. But, we try to be good neighbors. He was well informed. They had two and a half years to make a complaint. The very first time I heard that they had any issue with the wall at all was September 19. I got a text from Mrs. Bicak saying that she saw those capstones on there. She said, "*As you know that wall is right on the property line and those capstones are going to hang over an inch on our property. Make sure that they don't hang over an inch.*" I pulled out my survey and saw that our wall is far enough back from the property line that the capstones aren't going to be on their property. They didn't believe me. Yes, when we did the over dig, like you do on any retaining wall, that pin was removed. We had two stakes out there to try to lay back the original pin. The stake was up there and was subsequently covered up by Dr. Bicak when he concreted in some blocks. I suggested to Dr. Bicak that he get a survey done. If you don't believe me or my survey, get your survey done. Their survey is exactly with ours with the exact same offset of the wall to show that the capstones would not hang over the wall. So, I really don't understand the issue here. Who gets the best benefit of this wall? The Bicak's. It stabilizes their property. It stabilized the two roads that we all need access to. We are going to front it with stone. It will look good.

The last thing I will say is to talk about the vegetation. I was the only one to

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CO. & PROBATE CLERK
BENTON COUNTY, AR

maintain the vegetation, even the stuff that was on his property. I watered it, sprayed it, trimmed it, dug out all the dead stuff. They never did anything with it. I told them that once the wall is complete, whatever kind of vegetation they wanted up there, I would happily provide that. That was the only thing they ever responded to saying, "No, we would like to take care of that ourselves."

Mr. Bracy: Thank you for your comments. Right, we are not arbitrators.

Mr. Maienschein: What was the original variance for?

Mr. Reamer: Just the house. Mr. Easley demoed, remodeled and expanded it. It was within the northern setback for this property.

Mr. Easley: We were expanding the garage and needed to be within 10'. Remember that the retaining wall has been there for 30 years well within the 10', between 3' and 8'. There's always been a retaining wall there and there needs to be a retaining wall.

Mr. Bracy: The retaining wall was closer to the roadway. Was that on your property?

Mr. Easley: It was on my property and it is still on my property. Correct.

Mr. Bracy: The variance you got was for the house to be less than 10' from your property line?

Mr. Easley: On the north property line. That is right.

Mr. Reamer: The setback variance from 2015 was for this northern property line. This house was remodeled and expanded to be within 10' of the northern property line. The retaining wall is along the western property line between High Chaparral and Low Chaparral.

Mr. Maienschein: Is there an easement for that road to go to the other properties?

Mr. Reamer: Yes, sir. Both High and Low Chaparral are private easements.

Mr. Gambrill: They are blue sign roads. They are privately maintained.

Mr. Bracy: So, the easement goes to the back side of this concrete road?

Mr. Easley: Well, you might argue that it goes on both sides. High Chaparral is an easement for the neighbors coming down.

Mr. Bracy: I can make my question a little clearer. I have two buildings. I have an easement between those two buildings. This wall is on your side of the easement?

Mr. Easley: Correct. It is on my property and the easement runs through my property.

Mr. Bracy: It's on your side of the property line.

Mr. Reamer brought up a graphic of the plat and discussed.

Mr. Reamer: The retaining wall is outside the easement but inside his property lines.

Mr. Easley: I think the easement would only be an issue if I tried to move it to the east and restrict the easement and violate the 20' easement. What I tried to do was actually improve it.

Mr. Bracy: As you continue on down this road, there's a porta potty and then there's another property and another retaining wall. Was that retaining wall there before or after yours?

Mr. Easley: You put me in the role of being a little bit of a tattle tale. That was put in by our fourth neighbor who live next to the Bick's. Again, a very severe slope. We had a lot of trouble with the road erosion. Two of my neighbors got together and agreed to put in two retaining walls to mitigate the slope there. It was put in less than a year ago.

Mr. Bracy: Was it there before or after your wall?

Mr. Easley: After.

Mr. Bracy: Thank you.

Mr. Tucker: Do you line up with that wall?

Mr. Easley: We actually do at the bottom. We kind of coordinated things. As

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CLERK OF COURT
CO & PROBATE CLERK
BENTON COUNTY, AR

my wall wraps around, where you see the porta potty, they tied in. We even tied in the drainage back behind those walls. It drains on down to an area down below.

Mr. Bracy: If I read our regs right, fences wouldn't be a problem. That's why we have 10' easements from property lines but permanent structures are a little bit different if greater than 4' tall. This is greater than 4' tall?

Mr. Easley: Yes. Again, we apologize for the confusion. I think even if you talk to some of the folks on Staff, they would even tell you that this was not clear in the regulation that a retaining wall like this would be would require a variance. Believe me, if we knew that, we would have done it at the same time as we were asking for the variance for the house.

Mr. Tucker: You are covering it with a stone, or simulated stone to make it look more like the environment that's around it.

Mr. Easley: Absolutely.

Mr. Tucker: Are you going to plant anything in front of the wall?

Mr. Easley: No because the purpose of the wall is to allow greater access and easement around any vehicle that may be parked in front of my house. The other reason was to stabilize that hill side with a strong, engineered wall. There is one thing that was brought up about the footing. There never was a bull dozer there. It was done with a back hoe. We used a Case back hoe with an 18" bucket to dig the foundation of the footing on that. As some of you may know with some engineering experience, when you build a reinforced concrete retaining wall, you don't put it right on the center of the footing. You put it on one side or the other to do a cantilever affect. Ideally, you would like the cantilever to go into where the over pressure is. In this case, we didn't want to go past that property line. Even the footing is on the inside of the property line. I have photos available. So, a 10" wall was built. We put the upright reinforcement bars 8" from the back side. So, the heal is longer on my side of the property and then a 1" or 2" on the other side of the property. Where the wall takes a turn, we did do an over dig toward my side of the property to give a little bit of extra stabilization on the footing.

Mr. Torrez: As a civil engineer, the part that I am having difficulty with here, you mentioned that you had a conversation with your neighbors back in 2015, why didn't you get something legally written up for an easement in the area.

Or, why didn't you just go investigate regarding the setback?

Mr. Easley: I guess because there was already a retaining wall already in the setback. It was a replacement, an improvement and a movement further west of the retaining wall. It was just a replacement of what was already there. It's a clear improvement for all of us.

Mr. Bracy: Did you get any written documentation from your neighbors?

Mr. Easley: No, I didn't.

Mr. Bracy: Okay. We cannot arbitrate the legal part that you have encroached on your neighbor's property. Submersed or surface permanent structures (and in my estimation, this is a permanent structure) in your neighbor's property, they can do whatever then need to do. You need to satisfy them. My comment would only be that you have an easement to build on to your domicile, your house. Anytime you vary any permanent structure to within your property line, whether they were there before or moved, you would need a variance. It is difficult for us as a Board to after the fact grant a variance on something that is already constructed other than deny it. You will have to take civil action. We can't necessarily make you tear it down and move it. Maybe we can.

Mr. Easley: There was some confusion within the Planning Office whether it was required or not. There is a rewrite of the regulation going on to be clearer.

Mr. Homeyer: What is the hardship for why this should be allowed or permitted? Hardships are supposed to be related to the land. Is it based on the topography or what exactly?

Mr. Reamer: Here is a fairly lengthy narrative that Mr. Easley has provided (*show on screens*) in relation to the variance request. As far as the specific reason today, the hardship could be stated by the applicant at the meeting tonight.

Mr. Gambrill: You could approach your decision making as if the wall weren't built and then track back your logic.

Mr. Collyge: If we deny the variance, he tears down the wall and has to move it back 10'? We don't have the authority to make him tear it down. Correct?

Mr. Gambrill: Well, there are avenues for appeal.

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BENTON COUNTY, AR

Mr. Collyge: That is my question. We have no enforcement procedure to make him tear down that wall.

Mr. Gambrell: I don't believe that the Planning Board has that enforcement. I would defer to my Administrator of General Services and perhaps the Building Official on this matter.

Mr. Sudduth: If he is denied, yes, we would enforce the regulations which would mean that we could take it to the Prosecutor and have the Prosecutor file charges. We have the enforcement and then we would go into litigation. The judge would decide if they are going to force him to do that. If he is in violation of a setback in our regulations, we do have full enforcement procedures.

Mr. Collyge: If he does tear down that wall, is he obligated to rebuild anything? It would be a civil matter in that case, isn't it?

Mr. Gambrell: If you don't replace the wall at least as it was, (or according to testimony) there could be a structural, landscaping or soil erosion matter that would then become a civil matter.

Mr. Sudduth: Once the wall is gone, he would either have to get a variance for a new wall or construct it according to the regulations with the proper setback.

Mr. Collyge: So, basically, he would tear down the wall and come back here and get a variance to rebuild the wall.

Mr. Sudduth: In essence.

Mr. Collyge: If he moves it 10' back, would he be into the easement? If so, by how far? Then he would be in violation of the easement.

Mr. Easley: Yes.

Mr. Linn: It's not only a civil matter. Structures are also prohibited from being within easements.

Mr. Gambrell: The way our regs were written that were adopted in 2014, as we have heard tonight that the original wall, treated as a structure, was in place prior to current regulations.

Mr. Collyge: So, basically, we would be chasing our tail and going in a circle? From tearing down a wall, coming in to get a variance to rebuild the wall that would be into the easement.

Mr. Torrez: What if he would have just removed the timbers and then create a structural integrity issue for the neighbor to the west? How does that work? Theoretically, those timbers are on his property.

Mr. Collyge: I would think he could do what he wanted to with the timbers.

Mr. Gambrill: If he compromises an easement by virtue of disturbing timbers on his own property, that truly is a civil matter. An easement is an agreement between private property owners on a blue-sign roadway that is not County maintained.

Mr. Torrez: So, today he is asking for a zero-lot line variance. Currently the timbers are 3' – 5'.

Mr. Collyge: If everything has been left alone, even if it would have eventually deteriorated, you could have removed it but you still would have to come in here for a variance.

Mr. Bracy: Do we have a legal document that tells us that this is over the property line or is that not an issue?

Mr. Reamer: We have a survey that certifies that the wall is on Mr. Easley's property by 2.4 inches at the minimum. So, it is not encroaching onto the Bicak's via survey. It has not been certified that the wall is on an adjacent property. It is on the Easley property.

Mr. Bracy: Our Staff has found that this is on the property line around the property in question by 2".

Mr. Gambrill: If we were to obtain an improvement survey today that showed the previous railroad tie wall, that would be a nonconforming structure. It predates regs and it would be allowed to exist. Under Chapter 4, we have surveyors site that portion of our regulations that speaks to nonconformance. Those are allowed to stay as is if you don't touch them.

Mr. Tucker: So, it would essentially be a violation of the easement if a retaining wall were not there to provide access via Low Chaparral.

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CLERK OF DISTRICT
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DEPTOR COUNTY

Mr. Gambrell: I left my JD at home. I am sorry. I am not an attorney.

Mr. Torrez: If this was two years ago and someone came up and said that they wanted to build a retaining wall with a zero-lot line, I probably would oppose it. You need at least a 3' setback. That's what I am thinking.

Mr. Bracy: Our record and past experience when we've been proposed to go to zero lot lines has requested that the owner come in at least 4' - 5'. On the other side of the property, you can't do any maintenance on it without encroaching on your neighbor's property.

Mr. Torrez: We have denied 8" off the property.

Mr. Tucker: Is there a similar easement on High Chaparral with this little property between it?

Mr. Reamer: Correct. High Chaparral is set up the same way as Low Chaparral, a 20' wide access easement.

Mr. Homeyer: That is offset from the property line?

Mr. Reamer: Correct.

Mr. Gambrell: You have private easement situations where there are nonconforming structures that predate regs sitting there within the private easements.

Mr. Collyge: How far from the property line to the easement?

Mr. Reamer: The survey is scaled as well as it could be but approximately 5' - 8' from the property line.

Mr. Bracy: High Chaparral has an easement from this property line that is the same distance, 5' - 7'?

Mr. Reamer: This is a 1995 survey showing the common property line on the right-hand side. Again, the access easement is set off the legal property line. Maybe 2' - 3' off the property line is then the 20' wide access easement. More south, it is right on the property line.

Mr. Bracy: So, between both of these properties, there are easements for road

ways off of this property line division?

Mr. Reamer: Correct.

Mr. Easley: So, between the two road ways you have approximately 3' – 10' of separation between the two road ways and almost a 45-degree slope.

Mr. Reamer: This property line here is the common property line between the Bicak's at 2 High Chaparral and Mr. Easley at 1 Low Chaparral. This is the common property line in which the retaining wall is located. Low Chaparral contains a 20'-wide private access easement and so does High Chaparral contain a 20'-wide access easement.

Mr. Maienschein: High Chaparral is actually closer to the property line.

Mr. Reamer: Correct. Yes, sir.

Mr. Bracy: There is a sliver of property uninhabited between two easements.

Mr. Reamer: Correct.

Mr. Gambrill: An uneased strip of land.

Mr. Bracy: We have heard your neighbor's comment and your comments. Unfortunately, it makes the Board struggle here. If you came to us two years ago and asked, we would not approve that. We would request that you move it away from the property line no less than at least a couple of feet. We have done it before so we have case history that supports than activity.

Mr. Easley: I would ask you to take in at least two things: (1) the benefit of this wall to all of us; (2) two years and eight months passed without any complaint or comment. Because of other complaints or whatever they have, because I am building a house, they decided to make this an issue and put you guys in the middle of it. I apologize. I would just ask you to look at the benefit. It's a correctly engineered wall that supports his property by stabilizing the majority of the front of his property. It improves the easement for all of us. I can't say more. What's the grief?

Mr. Bracy: We understand that. I am sorry, sir. We can't arbitrate between your comments and your neighbor's comments. We have to look at the land use of it.

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Mr. Homeyer moves to approve the Variance. Mr. Collyge seconds the motion.

TINA GREENE
COURT CLERK
CLERK & PROBATE CLERK
BENTON COUNTY, AR

Motion approved: 6 – 1 (Mr. Torrez opposed)

**II. Arce Site Plan Review, #17-309, 12905 Cloverdale Road, Rogers, 72756;
18-05110-000, 18-05114-000**

Representative: Carlos Arce, 3407 Central Drive, Rogers

Staff gave a presentation on the Arce Site Plan Review, #17-309, 12905
Cloverdale Road, Rogers, 72756; 18-05110-000, 18-05114-000

Public Comments: None

Mr. Torrez motioned to approve the Site Plan Review. Mr. Maienschein
seconded the motion.

Motion: 7 - 0

TECHNICAL ADVISORY COMMITTEE

- 1. Call to Order:**
- 2. Old Business / Ongoing Applications: None**
- 3. New Business:**

**I. Lucas Waiver and Site Plan Review, #17-312/17-318, 11010 and 11015
Limestone Lane, Rogers; 18-04167-000**

Representative: Lori Lucas, 9140 Grimes Drive, Rogers

Staff gave a presentation on the Lucas Waiver and Site Plan Review, #17-
312/17-318, 11010 and 11015 Limestone Lane, Rogers; 18-04167-000

Mr. Bracy: Do you have anything to add to that ma'am?

Ms. Lucas: I think that we have a lot of flexibility on our layout for this. I am
doing this well in advance so I appreciate your input and follow up so that we
can stay in compliance with all of it. The fact that this has some opportunity

down the road in a decade or so to have a development. The reason that we are going to put this in is just to have a portable/pre-fab storage facility not a full-blown built warehouse storage. I think that there's still residential potential down the road. That is also the reason we thought that we would go ahead and set up the utilities. Since that site was already cleared of all the trees we have taken some brush out. That seemed to be a logical spot for it. So, if it is in compliance, that's great. If it is not, we can find a way to work something else around it. Eventually an 18-acre set will be subdivided. If that's the way to do it to accommodate the septic, that's okay too.

Mr. Tucker: Can you tell us a little bit more about what you are wanting to do out here? I kind of get the reason it's so far out is the development potential in the area. Is it a restaurant?

Ms. Lucas: No. Basically, food distribution. This isn't a business that I have started yet. I am just working on the business plan. This would be for small private commercial distribution. Not to major chains. So, I can't get very far until I have everything running. There is potential through my network... jerky, dairy beverages and wine. Not for manufacturer of any of those but for storage. And not for sale out of that location. Only for storage. And then it would be distributed from there. If I look at the landscape for those potential products, it needs to be somewhere that can be secure. Also, if you do spirits or wine, you have to have a facility that is independent, not adjacent or communal like a storage space you can rent in a big, locker type of situation. You can't have adjacent insecurities. I am just trying to think ahead for those possibilities.

Mr. Tucker: Will there be somebody out here full time?

Ms. Lucas: No. There will be office hours by appointment only and deliveries by appointment only.

Mr. Bracy: You stated that this is a temporary/pre-fab structure. But you are going to have a concrete basement structure?

Ms. Lucas: Yes. That part would be permanent.

Mr. Bracy: Because the road curves there, you are 50' from the front but you also have to be 50' from the north corner.

Ms. Lucas: Yes, and we are. I don't think my hand drawing is very accurate but we don't have any conflicts within that 50'. We have room to go back a

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BENTON COUNTY, AR

little further if we need to.

Mr. Bracy: Do you have an architect or engineer to do your site plan?

Ms. Lucas: Just a surveyor is all we would get.

Mr. Bracy: You may ask Staff for help for a little more information on your site plan. The set backs from the road would be very helpful in your activity.

Mr. Gambrell: Staff can work with you between now and Public Hearing. Just some sort of loading or unloading. You mentioned some sort of periodic deliveries. We would just that that is done off the right of way. Just so that there isn't any backing. That is in our provisions.

Ms. Lucas: Sure. No problem.

Mr. Tucker: Size of the largest truck. That kind of thing.

Ms. Lucas: Okay.

II. Pennington Site Plan Review, #17-315, 14100 East Highway 94, Rogers; 18-03734-000

Representatives: Robert Pennington, 15750 Allegro Place #3226, Addison, TX
Travis Pennington, 9526 Neill's Way, Rogers

Staff gave a presentation on the Pennington Site Plan Review, #17-315, 14100 East Highway 94, Rogers; 18-03734-000

Mr. Bracy: Do you have anything to add to that?

Mr. Robert Pennington: First off, I know it is really late and I appreciate that you guys stayed to see this all through. We just want to do our best to take care of the area. Travis (*Pennington*) and I grew up just a few blocks away. Travis (*Pennington*) is currently raising his family of four girls there. So, it's an important area to us. We just want to work as closely as possible with you guys to do everything we need for our community and to add a business that is really needed.

Mr. Maienschein: I think your site plan needs to have any proposed signage shown on it.

Mr. Robert Pennington: Of course.

Mr. Travis Pennington: Can you elaborate a little bit on that?

Mr. Maienschein: Are you going to have a sign advertising...? That needs to be on your site plan.

Mr. Travis Pennington: Okay.

Mr. Tucker: Right now, it shows that you are taking up Stacie Circle. Is there a plan to abandon the road way?

Mr. Travis Pennington: If I understand your question correctly, those addresses have already been eliminated. So, there is not anything there. As far as the dirt work goes, the gravel lot would cover that part of it. Is that what you are asking?

Mr. Tucker: If this is actually a road,....

Mr. Travis Pennington: It's not recognized on the 911 Map if that's what you are getting at.

Mr. Tucker: It may not be recognized on the 911 Map; but, it may be platted. There may be a legal description that says that's a road. If it is, then that road would have to be abandoned.

Mr. Travis Pennington: I understand. Okay.

Mr. Tucker: That would be an action of the Quorum Court. They would have to do that.

Mr. Reamer: It's a simple petition to the Emergency 911 Administration to vacate, especially if there are no owners that have to use it for access to their homes. Usually you have public roads that want to be private so the group of property owners will petition to remove that county right of way designation.

Mr. Tucker: Okay.

Mr. Travis Pennington: Up until early 2009, the lot was a trailer park. They had water issues. Once that was condemned, everything had been moved out and foreclosed. It's been owned by the current owner since 2009.

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TRAVIS PENNINGTON
CO. & PROBATE CLERK
BENTON COUNTY, AR

Mr. Tucker: It may be that you just have to go through the step of the petition to abandon Stacie Circle. Are you also aware that there was a site about 300' to the north that had a lot of people.... Tonight's turnout would pale in comparison to the number of people that turned out to oppose that another project.

Mr. Travis Pennington: If you follow 94 just around the corner a little bit, my driveway is just right there.

Mr. Tucker: You were at that hearing?

Mr. Travis Pennington: I was not there. Some family members were. We have family that live on 94 also. I am definitely familiar with it and became more acclimated with it throughout this process.

Mr. Robert Pennington: One of the first steps that we did through this planning process was to pull the meeting notes and we through line by line every single concern outlining the concerns. We take those really seriously. Those are Travis's neighbors and my neighbors for a long time as I grew up in this area. We are aware and take those concerns seriously. We understand why folks were upset with that proposed development. We are trying to be very different.

Mr. Tucker: Your driveway is further off the road which helps you quite a bit. Is your gate going to be where this red line is shown?

Mr. Travis Pennington: That's right.

Mr. Tucker: Do you know how far that is? Is that far enough that you can pull a boat....

Mr. Travis Pennington: You can have two vehicles and two boats in line coming in and out. So, there is enough space for a standard-sized pick up truck and a 24-1/2' boat which is about as long as will be able to be held where we are at. You should be able to have two coming in and two coming out. We did that specifically. We did have the gate closer to the road but for aesthetic reasons as well as for safety reasons, we didn't feel that that was a good idea to have people hanging off there. We looked at it and it just made sense to bring that around because that road was already used by people pulling motor homes in and out of there. So, it's wide enough.

Mr. Tucker: You feel that there is adequate visibility? It looks like it is quite a bit better.

Mr. Travis Pennington: With this section of road, that's a really good point to bring up. Once you make the turn at Monte Ne Chicken to come up the hill, that's a pretty gradual turn up there that is going uphill. It would be a less than ideal place to put that. Once you get to the edge of this parcel, the way that the topography goes, it levels out. There is a cut out where this property is built up. So, our first (*planning*) sign is sitting way high because there is this massive hillside that goes up to where it is flat. Then it levels out and is all on the same field. It is straight and flat, relatively.

Mr. Reamer shows a photo of the current access drive for Stacie Circle.

Mr. Travis Pennington: You see that turn is gradual and you can see what is coming toward you before you even get to that turn.

Mr. Robert Pennington: One of the things that we wanted to make sure we did was to start this development beyond the tree line. We are maintaining that current tree line and making it as visibly pleasant as possible.

Mr. Travis Pennington: The closest point that the building is to the road is about 68', from the middle of the road to the building. For multiple reasons that's why that was put there. I really appreciate the feedback on this because anything else we can do to make this the way it needs to be, we want to do it for the sake of the Board here and the neighbors that we have.

Mr. Bracy: The access entrance is the existing roadway there?

Mr. Travis Pennington: Correct.

Mr. Bracy: What is the radii that you are going to look at turning a pick up and a 20-some foot boat going in there. What are you going to have for access so hat they can pass one another while somebody is waiting to get out? How would a new vehicle with a trailer turn in?

Mr. Travis Pennington: The way the road was built was so that you could put in a 50' – 60' double-wide trailer. They could make it in there. It is very wide. It was built as a road. It's wide enough for both ways. I am guessing you are looking for the radius of that turn. I don't know what the radius is. They will have to put their key code in. Then when they pull out and turn, there is enough

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DENTON COUNTY, TEXAS

room to pull in.

Mr. Bracy: When it was a mobile home park, they were moving vehicles in one at a time. So, he took up the whole thing. There's going to be a vehicle coming out. He's going to be sitting there waiting to have access. Another vehicle is going to want to come in at that time. So, you want enough clearance there. It looks like you have plenty of road way there. You may have to expand that to some degree. Your key pad is going to be 80' down the road so the vehicle will need to be completely off the road and another vehicle can come behind him?

Mr. Robert Pennington: That's right.

Mr. Travis Pennington discusses where parking will be on the site plan.

Mr. Travis Pennington: We also have 30' to the left of the building.

Mr. Bracy: This is a rise. There is no access back to the homes in the city?

Mr. Travis Pennington: Zero access.

Mr. Robert Pennington: Yes, zero access. There are heavy trees there and a pretty steep drop off as well.

Mr. Travis Pennington: If you pull up the topography, you will see in this whole area, it's steep all the way out to the Lake. With this spot, we have a great, flat area there. It protects the whole area from the people on all sides. It just seemed to work.

Mr. Robert Pennington: One last note regarding our motivation for this. We grew up out here and we have our family up the road. Prices at marinas have gone up year over year for the past decade to the point that they can afford them. They only other storage option is right down the hill. It is right across the street from Monte Ne Chicken. There is one there that is completely full. If you are someone who doesn't have a ton of money in the area, you can't afford the costs at the marina, it's hard to keep a boat. This is a way we can serve our community and meet that need for folks who can't afford the prices at the marina.

Mr. Bracy: I understand that you did a lot of due diligence. There is a boat storage on New Hope Road that's up into the city that has been let down for

quite a long time now. They tore down a lot of the older buildings and left the new ones up. In your research, if that was a going process in that area, why would the owner have let that not be an advantageous place to have a boat? Beyond that, going further up, there's a place that has been there a long time that has boat storage. I understand that they are pretty full most of the time. So, putting another boat storage unit in this general arena, why were they unsuccessful?

Mr. Travis Pennington: Our dad, when he lived out there, kept his boat there. In my opinion, it was just being an irresponsible business owner. Things weren't taken care of. As a business owner, it's just common sense. If you don't care of things, it's not going to thrive. I think a ball was dropped there. I think it is pretty clear that with the movement that have been there... I am sure that you are aware that it has been repurchased. There is some construction going on. I have been in communication with him. There's actually already a waiting list for what he's got proposed. That was one of the huge things that we looked at. We called Russell Storage. We called New Hope Storage at First and New Hope. I did talk with the Eastside Boat and Storage owner at Monte Ne and New Hope. I even branched out and went onto First Street and down 8th Street. I went north, south, east and west to see who had it available. There was not one available currently. There was some outside storage available but nothing that you could store a boat or RV in. There are 96 units at New Hope RV Storage which is just a couple of parcels away from where we are proposing this. The 96 are completely full. We have some close family friends that run the Highway 12 East Storage. They have none available there. The only units that we were able to find that were available on Highway 12 were three and they had finished construction on a new 20-unit storage building. I can safely say that for the last three months. It was shocking. My brother lives in Dallas but he grew up here. He brought the idea of a storage unit up. I am sure you guys have seen a lot especially in Bentonville and Centerton. Some of those very large storage units that are going in. It's blown me away by talking to these people have fast they are filling. The only ones that are readily available are the climate-controlled. People don't appear to be spending the money on the climate-controlled. It's a little more money and they just want a place to put their things.

Mr. Robert Pennington: We don't want to spend too much time but in addition to talking to several storage facilities in the area, we talked to multiple boat retailers in the area and they experienced year over year growth since 2010 with 2017 being a record year. We also spoke with the Benton County Assessor's Office. It lists 15,007 boats accessed in Benton County alone. With the growth

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BENTON COUNTY, AR

that we have had in this area, there are just a tremendous amount of boats and people are continuing to buy more boats. So, there is definitely a demand there.

Mr. Reamer: This property is vacant at this point.

Mr. Williams: What is the disturbance of the vegetation and trees that will be involved?

Mr. Robert Pennington: It's just under an acre that will be involved or .83 acres. On that area, it's where mobile homes were before so a lot of that area has already been cleared out. There will be some trees that will have to go down. Whatever trees have to come down, we want to plant something new so it's flowering and pretty to look at from the road.

Mr. Travis Pennington: Before 2009 when the ice storm hit, that was one of the most beautiful places to come down the hill. After 2009, that area is just riddled with trees that have fallen. It kind of took away from that. It is still a beautiful area which is why I like to live there. One of the first things we talked about when it came to the trees was the tree line on this property. Where we wanted to put this, it just worked with minimal impact to the trees.

Mr. Gambrill: Regarding section 6.5, Site Plan design standards regarding vehicle access requirements. Items D, E and F speak to the way the access driveway is arranged when vehicles are backing out onto the County roadway, trucks and semis and truck turning templates. It does make the recommendation to note those on the site plan. Access driveways shall be of sufficient length to allow vehicles to enter the center and not be impacted from on site conflicts.

Mr. Tucker: There's a state statute that requires architectural engineered plans. It's like \$150 or \$200,000 worth of development. If you are under that, it's not required. If you are over it, we need to see civil plans.

Mr. Robert Pennington: Yes, we are just under that. We are moving forward with architecture building plans. We are having an engineer do a survey. Even though it is not required, we are going to go ahead and do that. We want to do everything we can to make sure it is right.

III. Planning and Development Regulation – Proposed Revisions

Mr. Sudduth: Would it be feasible or make any sense since it's 10:19 p.m., instead of going through all this tonight, would it be okay with the Board if we had the Board review this and then we could do it another time? We are not really pressed to have this looked at tonight. We have multiple pages. I think it would be more advantageous to have everybody look at this and then we can talk in a few more weeks. This will take a while to get through this line by line. We can get it to you by e-mail or print it out.

Mr. Bracy: I appreciate the comment. I did get a chance to brief through it. I have no objections.

4. **Other Business:** None

5. **Staff Updates - Administrative Approvals:**

- I. Thurman / Walter + Duggar Minor Subdivision, #17-254, 9856, 9818 Holt Drive, Rogers; 18-05239-003, 18-05258-001, 18-005258-000
- II. Nelson Minor Subdivision, #17-301, 17169 Peterson Road, Gentry; 18-11664-000
- III. Brashers Minor Subdivision, #17-306, 10992 State Line Road, Gentry; 18-16086-005, 18-16069-000
- IV. Funk Minor Subdivision, #17-311, 12738, 12772 Wiseman Road, Hiwasse; 18-12064-000

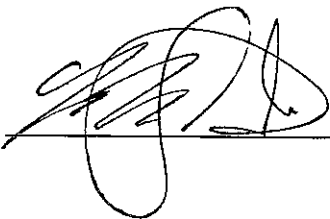
6. **Discussion Items:** None

Meeting Adjourned: 10:30 p.m.

Next Meeting: Wednesday, January 3, 2018

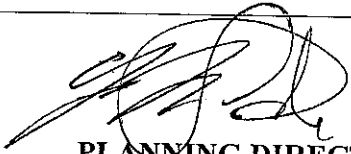
APPROVED THIS 3rd DAY OF January, 2017

ATTEST:



APPROVED:





**PLANNING DIRECTOR or
PLANNING MANAGER**

**PLANNING BOARD CHAIR or
PLANNING BOARD VICE CHAIR**

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**REGISTRATION
SECTION CLERK
DEPT OF COMM PLAN**

