

**PLANNING COMMISSION
MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, January 15, 2013, at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

CALL TO ORDER: Tim Youmans called the meeting to order at 3:05p.m.

PRESENT: Dave Shore, William Wiley, and Commissioners Jennifer Beatley, Carroll “Beau” Correll, Jr., Kevin McKannan, Stephen Slaughter, Jr., David Smith (7)

ABSENT: City Manager Dale Iman (1)

EX-OFFICIO: Councilor John Tagnesi

FREDERICK CO LIAISON: Kevin Kenney

STAFF: Tim Youmans, Will Moore, Aaron Grisdale, and Catherine Clayton (4)

VISITORS: Lynn Koerner, Tom Sammanco, and Robert Cocker

NOMINATION AND ELECTION OF OFFICERS:

Mr. Youmans called for nominations for Chairman and Vice Chairman. Chairman Shore nominated William Wiley for Chairman and Stephen Slaughter for Vice Chairman. Commissioner Correll made a motion to close nominations and vote by acclamation.

A voice vote was made and nominations were approved unanimously, 7-0.

Chairman Wiley asked about committee appointments and he suggested reviewing them quickly and delaying until the next work session. Mr. Youmans gave the list of appointments needed by City Code and stated that the Commission must elect amongst themselves a voting member to the Economic Development Commission and, although not mandatory, appoint a liaison to the Economic Development Authority. There should be a representative to the Frederick County Planning Commission. Past practice was to have a regular and alternate although there are no rules as to how you appoint. The other two that are not mandatory is one being at the Winchester Parking Authority as a none-voting advisory member and the second to the Old Town Development Board also as optional liaison.

Vice Chairman Slaughter asked the Commissioners to think about what they wanted to do and keep it in mind for the next meeting.

APPROVAL OF MINUTES

Ms. Beatley moved to approve the minutes of the December 18, 2012, regular meeting as presented. The motion was seconded by Mr. Correll.

Motion passed 7-0.

CORRESPONDENCE

Mr. Youmans advised that there are a number of items that relate to the tabled motion RZ-12-405 Racy Meadows Development that he just received and has distributed. These included: a) a rezoning request proffer which is believed to be updated just as of this afternoon; b) a Fiscal Analysis letter dated January

10, 2013; c) approved proffers for the Willow Run rezoning in Frederick County; and d) an 11" x 17" site plan of the rezoning proposal.

Chairman Wiley stepped aside and removed himself due to his conflict of interest in the two (2) items that are forthcoming. He then turned the meeting over to Vice Chairman Slaughter.

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY PLANNING COMMISSION LIAISON

Commissioner Kenney reported one (1) rezoning that has been tabled due to lack of information on some traffic studies on the Route 11 North corridor and Martinsburg Pike. Additionally, he stated that there will be no meeting for next week or the first of February.

PUBLIC HEARINGS

- A. **CU-12-597** Request of Shenandoah Personal Communications, LLC, for a conditional use permit for a telecommunications facility at 119-129 North Loudoun Street (*Map Number 173-01-F-26*) zoned Central Business District (B-1) with Historic Winchester (HW) District overlay.

Mr. Grisdale advised that the applicant intends to install six (6) antennas to the existing brick façade located approximately 84-feet in height on the fly-tower portion of the site as part of an upgrade of service to provide Sprint 4G wireless service to the downtown area. The applicant intends to camouflage the antennas to the color of the existing brick on the fly-tower. The applicant has gone through the Board of Architectural Review and received a Certificate of Appropriateness. Facilities will be installed interior of the structure with the only portions visible will be the antennas themselves. There are no other telecommunications on this existing structure.

Vice Chairman Slaughter opened the public hearing

Lynn Koerner, 3126 South Ox Road, Edinburgh, Virginia, representative of the applicant, spoke and explained the importance of the project.

Vice Chairman Slaughter asked the board if there were questions for the applicant. Hearing none, he opened the meeting to public comment. Again, no public comment was given.

Vice Chairman Slaughter closed the public hearing

A question was raised as to the five hundred dollar (\$500) permit fee and whether it was standard in other counties and/or the state for large telecommunications facilities. Mr. Grisdale stated that he is unsure but he could research it. Mr. Youmans advised that generally the fee was consistent with most other localities with the exception to a few of the larger counties or perhaps some of the smaller ones and that a large portion of the fee goes to the advertisement.

Vice Chairman Slaughter called for a motion. Commissioner Beatley moved that the Commission approve and forward to City Council CU-12-597 subject to the following conditions:

- 1. Submit an as-built emissions certification after the facility is in operation;*
- 2. Removal of the facilities within ninety (90) days should the use cease; and,*

3. *Submit a bond guaranteeing removal of facilities should the use cease*

because, the use as proposed should not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

The motion was seconded by Commissioner Smith.

Motion to approve and forward passed 6-0-1 (Chairman Wiley abstained).

OLD BUSINESS

A. RZ-12-405 AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CE DISTRICT OVERLAY.

Mr. Youmans read the staff report and stated that this applicant seeks to go to the highest density zoning (HR) with no proposal to change Corridor Enhancements; however, it does propose to add Planned Unit Development overlay to allow for flexibility in things such as building height, clustering of units, and it allows for significantly higher density of units. Mr. Youmans then spoke of the Willow Run project stating that it is a mix of housing and age-restricted housing. As it relates to fiscal impacts, it references monetary contributions based upon whether the units are limited to age-restricted populations or for general population. It does not distinguish in terms of multi-family versus single family residential as far as he is aware. Handouts referenced are those that he distributed prior to the start of the meeting.

He also stated that the adopted Comprehensive Plan does call for commerce center use. The request is inconsistent with the Character Map of the Comprehensive Plan although it does talk about providing for targeted populations including the young professionals, empty nesters, and college-age students.

Mr. Youmans then addressed potential fiscal and traffic impacts as well as the proffer statement. There is some reference to the expense side of the equation in regard to educational expenses that will be addressed a little later. He stated that the proposed zoning would generate a significant reduction in traffic impacts that arise with this rezoning versus being developed with by-right office development.

Additionally, he noted the difference between what would be allowed on the site by right with existing R0-1 development which is 120,000sf of office development.

Reference then was made to the January 10th fiscal analysis letter. It does not take into account revenue from professional occupancy licensing however. He added that there may never be sales tax revenue generated. He then referenced education expenses and whether it would have an impact on the school system. The analysis does not account for such things as fire and rescue impact as well as parks and rec. Traffic impacts do seem to be accurately addressed. Parks and Rec impacts do seem to be addressed because of the dedication of the 3.7 acres of open space.

Mr. Youmans finished by stating that the modification that has Stoneleigh Drive as a private roadway connecting to Cedar Creek Grade at the eastern most end is desirable from a planning and traffic safety standpoint. The City engineer is satisfied with what they are showing and we feel that it is a desirable plan to work with Mr. Horton on the fronting property and we have received a rezoning application separate from this request and will be forthcoming.

Proffer #3, bulleted item #4, has been changed to read that “no building shall be constructed closer than one hundred thirty-five feet (135’) to the Cedar Creek Right-of-Way.” They have also added the two (2) additional proffers which spell out the number of units based on bedroom count and that the quality of construction will not be less than the quality of construction of its existing Stewart Hill apartment complex. Building elevations have not been proffered yet nor have they been formally made a part of the development plan.

On page three (3) of the Proffer, there is a change as it pertains to the dedication of the parks facility. Instead of being dedicated to the Winchester Parks and Recreation Department, it would be conveyed to the City of Winchester. There is new proper language under number six (6) dealing with storm water management basically stating that they do understand that they must comply with the standards and specifications.

Mr. Youmans advised that there are no covenants and restrictions that apply to this project and he had hoped there would be some that would address the issue of the quality of the development and the management and maintenance of the facility long-term.

He further discussed the proffer submitted by the developer of the Willow Run project and advised that this is used as just an example.

Vice Chairman Slaughter asked who would be responsible for the maintenance of the buffer areas that were going to be conveyed to the City. Mr. Youmans advised that the City would be responsible for every area that would be conveyed to the City including the buffer area along Cedar Creek Grade and where it goes back further to the combination basketball and tennis court area. Vice Chairman Slaughter then stated that these costs are not included in the fiscal impact analysis to which Mr. Youmans responded that operating expenses for that are not included.

It was then asked if Mr. Youmans has had a chance to review the fiscal impact analysis and whether or not he was comfortable with the way it is presented. Mr. Youmans stated that compared to the fiscal impact analysis that was most recently required of the development that adjoins the Sacred Heart church, this analysis does not provide as much information as that one did and because he thinks this analysis should be more extensive and should look at the lost revenue because the loss can be quite extensive. On the expenditure side, there is concern that there could be additional school-age population generated.

Concern was raised that this developer could sell-off this project the day after he gets City Council approval and the next person could say that they will adhere to these proffers but that they are “hung up on” creating a high quality apartment complex that caters to a particular market. So they would have to adhere to the number of units but there is nothing that says they couldn’t turn it over to a low-income housing tax credit proposal. Mr. Smith asked if overall Mr. Youmans was comfortable with this and to which he responded that overall he was not and that he feels there should be more information on the fiscal impact analysis but the traffic impact analysis is fine.

Concern was raised that since there are no covenants and whether it is possible that the project can blossom in to a development that could add additional traffic impacts not previously anticipated that could necessitate the need for a new traffic light. Mr. Youmans responded that since stipulation is made in the proffer with the unit and bedroom count that the traffic trip generation will pretty much be tied to that unlike school expenditures.

Mr. Correll asked if the first time that this is actually a net revenue generation as far as tax income in 2015 and Mr. Youmans responded that that is the first plan that there would be any revenues or expenditures.

Mr. McKannan stated that he understood that this is not currently Section 8 Housing but wanted to know if there is a possibility that it will be turned over to Section 8 Housing once the management is transferred on this. Mr. Youmans responded that he has no reason to think that it will but, yes, it is possible. Mr. McKannan then stated that this could have an adverse impact on busing and overcrowding in the schools, especially at the elementary school level.

Mr. Robert Cocker, manager, Valley View Management, 817 Cedar Creek Grade, came forward and invited the Board to ask any question of himself as applicant, Tim Stowe as Traffic Engineer, Ty Lawson as Counsel for Valley View, and Tim Painter as the Civil Engineer.

Mr. Shore stated that he has concerns as to the proffer and more specifically, why the elevations were not proffered because this is a major rezoning and also because it goes into a PUD. Due to the fact that the rezoning goes with the land not with the applicant, there should be some condition that if this project is sold, the new developer would be bound by what is in the proffer statement so that they cannot turn it in to a blended project or a Section 8 instead of a market rate project as it is intended.

Mr. Cocker stated that they did present examples of what the elevations would look like but they do not have real architectural designs at this point due to cost. He further stated that they have proffered that the quality will not be less than Stewart Hill apartments giving the City of Winchester the subjective criteria to either approve or reject.

He then stated that he is unsure of what they want when they continue to talk about rules, restrictions, or covenants. Mr. Shore clarified and stated that there should be something that states what is expected of the tenants as well. Concerns were raised as to the financial impact on the City and the fact that there is only one (1) scenario given in the fiscal analysis.

Vice Chairman Slaughter asked for public comment. Hearing none, he closed this comment period.

Additional concerns were raised as to the financial impact on the City and the fact that there is only one (1) scenario given in the fiscal analysis. Ms. Beatley asked what the vacancy rate was on Cedar Creek Grade because the applicant referenced the rate in the proffer. Applicant stated that he is using the vacancy rate on Cedar Creek Grade and Jubal Early Drive then Ms. Beatley stated that they are comparing commercial to residential which are different.

Mr. Cocker addressed questions and concerns of the Commission concerning the proffer, financial impact analysis, and traffic impact analysis and stated that they do not have specifics.

Mr. Shore asked about the market rate analysis of this development and other residential properties because he was concerned about the possibility that the project would be revenue negative and that any tax paying citizen would be concerned about this and the further possibility that the tax payers would be supplementing your project.

Mr. Correll stated that the Board has been given a significant amount of information which makes it difficult to keep sight of what exactly is being asked. He would like to have more clarification as to the proffer and assurances because they have a due diligence to ensure that the principles are going to be adhered to and, if it is recommended to move forward, that it should be to ensure conformity. Mr. Smith stated that it becomes unclear as to what we want because we continually get more information.

No one other than Mr. Cocker and the Commissioners spoke during the public hearing.

Concern was once again raised about the potential for a different developer to purchase the property and turn it in to Section 8 housing because of the lack of specifics in the proffer. More information was also requested on the fiscal impact analysis and how the schools would be affected.

Mr. Smith stated that there appears to be no public comments or concerns and that their fears were addressed previously. He is inclined to move this forward. Mr. Correll stated that if this is tabled they should state specifically what information is needed.

Vice Chairman Slaughter stated that it is a great project but that it is a major rezoning; however, it is not consistent with the Comprehensive Plan and that if rezoning should occur, there should be a compelling reason why it is being done. The Commission needs to analyze this fully especially from a fiscal impact standpoint. He also has concern that there are no assurances that the project will be what it is supposed to be if approval is granted.

Vice Chairman Slaughter asked for a motion.

*Mr. Smith moved to forward Rezoning **RZ-12-405** to City Council recommending approval because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement dated January 15, 2013, and the updated Development Plan titled "Overall Site Plan, Conceptual Layout and Traffic Pattern Plan" dated December 3, 2012.*

Mr. Correll seconded the motion.

Vice Chairman Slaughter asked for discussion. Hearing none he called for a vote.

On a 3-3-1 vote, the motion failed with Commissioners Correll, Smith, and McKannan voting in favor and Commissioners Beatley, Shore, and Slaughter voting against. Commissioner Wiley abstained.

Discussion followed as to procedure for breaking a tie vote.

*Mr. Shore moved to table **RZ-12-405** for thirty (30) days until additional information is provided particularly in the area on the proffers that will further restrict the rezoning to include the elevations of the proposed property, rules and covenants, further elaboration on the phasing, and perhaps with addition of limiting the types of rentals, for instance market rate versus government subsidized.*

Ms. Beatley asked that additional details on the fiscal impact analysis be added as well. Mr. Shore stated that there should also be additional information added as to the fiscal impacts on the school system.

*Mr. Shore then restated his motion to table **RZ-12-405** in specific detail requesting the receipt of additional information as it pertains to the area on the proffers of providing more information that will further restrict the rezoning to include the building elevation, property elevations, rules and covenants, further elaboration on the phasing, fiscal impact analysis, the fiscal impact on schools and school children, and perhaps with addition of limiting the types of rentals, for instance market rate versus government subsidized rentals. Mr. Correll requested to further amend and suggested that there be a full accounting of the questions and information requested and that they be given to the Planning Director, Mr. Youmans, within five (5) days of the meeting in order to extend proper response time and receipt for the February meeting.*

Commissioner Smith seconded the motion.

Motion passed by a vote 6-0-1 (Chairman Wiley abstained).

NEW BUSINESS

Vice Chairman Slaughter called for new business. Mr. Youmans updated the Commission regarding the site plan for City National Bank.

Additionally, Ms. Beatley asked how they were to handle submittal of their questions on **RZ-12-405**. Vice Chairman Slaughter stated that questions should be e-mailed directly to Mr. Youmans within five (5) days from today.

ADJOURN

With no further business to discuss, the meeting was adjourned at 4:56 p.m.