

PLANNING COMMISSION MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, June 21, 2016, at 3:00 p.m. in Council Chambers, 15 N. Cameron Street, Winchester, Virginia.

CALL TO ORDER:

PRESENT:

Chairman Slaughter, Vice Chairman Loring,
Commissioner Smith, Commissioner Eaton,
Commissioner Fieo, Commissioner Wolfe

ABSENT:

Commissioner Tagnesi

EX OFFICIO:

City Manager Freeman

FREDERICK CO. LIAISON:

Not present

STAFF:

Tim Youmans, Aaron Grisdale, Josh Crump, Carolyn
Barrett

VISITORS:

Kathleen Bochert, Arthur Christjohn, Ben Smith,
Daniel Sullivan, John Good Jr., Joe Robinson, Ross
Hewitt, Brian Beazer, John Scully, Ed Donohue, Chris
Sahr, Matt Butcher

Chairman Slaughter called for corrections or additions to the minutes of May 17, 2016. Hearing none, he called for a motion. Commissioner Smith moved to approve the minutes as submitted. Commissioner Fieo seconded the motion. Voice vote was taken and the motion passed 6-0.

CORRESPONDENCE:

Mr. Youmans stated a staff report for Item 2B was added for a Conditional Use Permit for a communications tower at 48 South Purcell Street. A letter of justification is also included for that item. A resolution to initiate, **TA-16-356**, pertaining to Certificates of Appropriateness in the Historical District. Also Item 6 under Other Business, a Site Plan revision for 2150 Valley Avenue.

CITIZEN COMMENTS:

None.

REPORT OF THE FREDERICK COUNTY PLANNING COMMISSION LIAISON:

Not present.

PUBLIC HEARINGS

NEW BUSINESS:

RZ-16-251 An ordinance to rezone approximately 64 acres of land containing approximately 149 parcels, either in full or in part, to be included in the Corridor

Enhancement (CE) District; as depicted on an exhibit entitled: "Fairmont/Wyck/N Cameron/ N Loudoun Proposed CE District" prepared by Winchester Planning Department on March 25, 2016. (Mr. Youmans)

Mr. Youmans reviewed the staff report and slides pertaining to the rezoning. Mr. Youmans explained which areas would be affected and how they would be affected by the Corridor Enhancement District. He also spoke about comments and concerns from the May 4, 2016 public information meeting. He also reviewed the timeline for approval and possible motions.

Chairman Slaughter asked if there were any questions for staff. Commissioner Wolfe asked why, with increased parking, would electrical wires have to be put underground? Mr. Youmans said underground utilities were required if there was a change of use or a change in service. Commissioner Wolfe asked if everything was grandfathered in and Mr. Youmans said it was.

Commissioner Eaton asked about the consistency of standards. She noted in one of the photos, there was a chain link fence that had slats in it. It had been discussed on another issue, about equipment compounds for telecommunications companies and if they wanted to put in a chain link fence, they could use the slats. Mr. Youmans explained that chain link fences were not allowed in front yards and telecommunication facilities were generally located away from front yards. She also asked if a business already had parking in front and they applied for a change in use, would anything jeopardize the use of the front parking lot. Mr. Youmans said it would not. Vice Chairman Loring asked if the car dealerships with banners were grandfathered in. Mr. Youmans said they were.

Chairman Slaughter opened the public hearing

Arthur Christjohn spoke about traffic flow and the amount of large trucks driving past his house on Fairmont Avenue and his concern about their exceeding the speed limit. He is also concerned about building height and FCC regulations. Chairman Slaughter said that traffic enforcement is out of the purview of the Planning Commission and that he should contact the police department. Mr. Christjohn said he had talked to the police department several times and they did not care about his situation.

Ben Smith spoke on behalf of the National Fruit Company. They are not opposed to Corridor Enhancement but believe it should be done in cooperation with all stake holders, not taken by force without consideration of the given rights of the properties involved. National Fruit had purchased their land 10 years ago. The enhancements are vague for today as well as in the future and open to interpretation by any administration. The potential additional costs would make them less competitive in the market place.

Daniel Sullivan asked if the tax rates would be changed. Mr. Youmans said no. Mr. Sullivan asked if car dealership pennants, outdoor seating for restaurants etc. would be grandfathered in and Mr. Youmans said yes.

John Good stated he had purchased a bankrupt furniture factory and had spent about 25 years doing site plans, attending Planning Commission meetings, Board of Zoning Appeals and Circuit Court to try and reuse an existing property that was legally built. He had used all those levels in 2005 and 2006 and it took over one year for the Planning Department's approval for the Building department to issue him a permit to install three residential sized overhead doors on the side yard of his building in the Commercial Industrial zoned area. When he started the process, Mr. Youmans told him he might not get one of the doors approved but he could drive through the finest neighborhoods like Meadow Branch and see overhead doors facing the street that were larger than the ones he wanted to install. He did not believe it was the intention of the City Council or the Planning Commission to be deceptive in any way. The use of the word "grandfathered" is feeble. Change in use, the way it has been interpreted, is so fine-tuned when people choose it to be that it takes almost nothing to have it click in then "grandfathered" goes away. Secondly, the use of the word "encouraged" becomes "required" when doing a conditional approval. The catchphrase "as determined by the Planning Director" makes it an open-ended thing. Finally, he would like to encourage the Planning Commission to not apply the ordinance to the areas discussed and recommend to the City Council it be abandoned and the rest of the city be allowed to develop naturally.

Joe Robinson stated he was representing the Frederick County Fruit Growers Association, located at the edge of town on Route 522. He was not sure what the Corridor Enhancement was going to do or not do. There are plans to eventually redevelop the property and the association was very concerned that the restrictions of the Corridor Enhancement would stop them from properly developing the property or make it more expensive. It may hurt the redevelopment of older industrial areas.

Ross Hewitt stated he and his wife own a business on North Loudoun Street and the fence pictured in slide 21 was theirs. They had spent about \$8,000.00 buying the slats for the fence that was grandfathered in. They would not have spent that money if it didn't really mean anything. The Corridor Enhancement would deter any future growth. If they were going to expand at their location, they would have to tear down the building and move it to meet the setbacks, the fence isn't right, the surface is permeable so they would have to pave three acres, there would have to be green area set aside and on down the list. It would be a huge deterrent to business growth so then they would have to look at relocating into the county or elsewhere. He looked at it as taking away property value. If business owners have another burden put on them, there should be tax credits or something to offset it. It's "tourist friendly" versus "business friendly."

John Scully stated he was a member of the Board of Directors of Winchester Cold Storage. Winchester Cold Storage is not in favor of the rezoning. Their property fronts on Loudoun, Wyck and Commerce Streets. They have 7 acres and the land is improved by about 500,000 square feet of warehouses, some of them built in the early 20th century. They do the best they can to repurpose them through the years to make them economically viable. He noted that Mr. Youmans, in his remarks, said "rezoning" to start then switched to "corridor overlay" and "corridor enhancement." The staff report

said it does not change the underlying zoning but it does. It changes things for existing businesses. It's not a new green field rezoning where businesses buy into a certain kind of zoning and build buildings to fit. These are existing buildings and businesses that another layer of bureaucracy is being put on and some of them won't be able to tolerate. The whole area works very well as an economic incubator for the city. Some of the businesses are old but some are new, such as Vintage Restorations. Mr. Scully gave a brief history of Winchester Cold Storage and noted they store other cold items as well as apples. He is all about tourism and making Winchester pretty but don't help another industry at the expense of theirs. He asked that the zoning be dropped and not be promoted, it does not help the area. The board needs to be careful of the unintended consequences of these kinds of things.

Chairman Slaughter closed the public hearing

Commissioner Fieo said he had been previously in favor of beautification through corridor enhancement in other areas. There had been community support in the other districts. The north end is different since it is mostly industrial with some commercial.

Commissioner Wolfe said she had been surprised that there was less public input in the other districts but for this one, there was a lot of opposition. She suggested that in order to move forward with it, perhaps the Planning Department could invite business owners to strategize with the department.

Commissioner Eaton spoke about visual impact and said she is in favor of anything that gives a mechanism to the community to make sure that the quality of life continues into the future. One of the things she thinks would be helpful to businesses is to get to the costs of any enhancements. In other sections of the ordinance, there are ball park figures per feet for sidewalks, parking, fences, etc. She wanted to make sure that businesses don't get put out of business because they can't make improvements. She would also like clarification on change of use.

Chairman Slaughter asked Mr. Youmans to elaborate on what change of use is. Mr. Youmans said changing storage from apples to oranges or pallets of something else was not a change of use. If someone wanted to change a warehouse to loft apartments, that is a change of use per the zoning ordinance and statewide building code. There are zero provisions in the corridor overlay standards and guidelines that talk about use in the sense of commercial, residential, office, industrial areas. Those are controlled by the underlying zoning designations. It will not constrain a business from continuing to do what they have already been doing. Commissioner Eaton asked if it precludes for example, an increase in storage along the rear of a property if it's not along the corridor. Mr. Youmans said National Fruit, for instance, has the majority of their storage outside the limits of the corridor overlay because it's not visible from the public street that's identified as part of the overlay.

Vice Chairman Loring stated he agreed with the other commissioners that the amount of public input is striking when compared to the other districts.

Commissioner Smith said this was his third corridor enhancement and it has had the most feedback. Being a business owner himself, he understands what the impacts and costs may be when you make changes to an existing property. You have a budget that may increase because of a change of use. He sees the potential impact if someone has property to be redeveloped. Mr. Youmans said they can't anticipate what a developer may want to do. If someone wanted to change an office to a warehouse, they could run into problems with the guidelines. Commissioner Smith said once you get to North Frederick, as you are coming into Winchester, the corridor leading to Fairmont Street is very small. To make such a substantial change would not be feasible. This is something they need more information regarding the impacts.

Commissioner Wolfe observed there is a favorable motion and a motion to table in the packet. Typically there is an unfavorable motion as well. Mr. Youmans stated no one asked for that as an option at the work session. The challenge is making a recommendation to forward as unfavorable because the Strategic Plan is very clear that Council wants to proceed with corridor enhancements. Commissioner Wolfe said perhaps it was better to table it and work with business owners so all their concerns are addressed. Mr. Youmans said it was not time sensitive and staff was willing to meet with business owners. It is unique in terms of industrial uses and non-conforming uses such as the residences there. This is to establish an overlay zoning, not change the designation of the zoning already there.

Commissioner Eaton said she would support more rigorous engagement with the business owners.

Chairman Slaughter said it was tough because normally there has not been the degree of concern received from the citizens. With the overall intent of following the Comprehensive Plan and Strategic Plan, what has been done with the other corridor enhancements has worked well. He did not think anything was over-burdensome. He would also support tabling it to look at business owner concerns.

*Commissioner Smith made a motion to table **RZ-16-251** until the August 16, 2016 meeting to allow additional time for more information.*

Commissioner Fieo seconded the motion. Voice vote was taken and the motion passed unanimously 6-0.

CUP-16-287 Request of Tracy Themak of Donohue & Stearns, PLC on behalf of Milestone Communications for a Conditional Use Permit for a telecommunication facility at 48 South Purcell Avenue (Map Number 215-01-2) zoned Education, Institution and Public Use (EIP) District. (Mr. Crump)

Mr. Crump reviewed the staff report and accompanying slides. He noted that he had copies of wattage information, notifications and justification letters available for review. After exhausting other locations, the applicant approached the school board which

already had an agreement with them. Mr. Crump went over the site requirements and what the tower would look like from different locations. The applicant had hosted a community meeting on June 13, 2016 at Handley Library. There were several city officials and board members present. The purpose of the meeting was to provide information to the community about the proposal, health and safety, visual impact etc. The tower could help with more coverage for emergency communications and wireless coverage. Mr. Crump reviewed the motions presented in the staff report. Mr. Youmans talked about the height of the pole and the landscaping details.

Commissioner Wolfe asked what the difference would be between putting the tower at Jim Barnett Park where it would blend better and the school. Is there a difference in coverage? Ms. Freeman said the Parks Advisory Board was approached but it was declined because it is city property and it would set a precedent of non-public use on city properties. The school is not city property.

Commissioner Smith noted the graph of the coverage and that most of it would be in the county. The county would benefit more than the city. When he and Mr. Youmans attended the meeting, they had asked for a letter stating the demand for data. Mr. Crump said it had not been received yet.

Commissioner Eaton said the Frederick County Commission is looking at a proposal for a 150 foot telecommunications pole for Senseny Road and Eastern Frederick area. The overall plan looked similar to what has been presented. She asked where the nearest existing tower in the city was and its height. Are they overlaying any of the gaps that this project is supposed to cover. Mr. Youmans said the closest one is on the north side of Route 7 at the I-81 interchange. Commissioner Eaton asked what the fall zone was for the tower. Mr. Youmans said a fall zone provision had not been established.

Vice Chairman Loring asked how far is the area to the track. Mr. Crump said he had a site plan for review. Vice Chairman Loring asked if the city or any other school properties had been leased for something like this. Mr. Crump said he believed it was the first. Vice Chairman Loring asked if the emissions report was for the one planned array or did it cover the other arrays that may be added to the tower. He also asked whether the screening is on the inside or outside of the fence. Mr. Crump said he was not sure about the arrays and the screening would be on the outside of the fence.

Commissioner Fieo asked if the staff had heard from the community as to whether there were concerns or complaints about coverage and internet access. Mr. Youmans said they had not.

Chairman Slaughter opened the public hearing

Ed Donahue, on behalf of Tracy Themak, introduced the individuals with him and their areas of expertise. He said because it is a school site, they often get questions about emission levels and health issues. Federal law preempts RFE emissions as a basis for

denial of such a request. Since it is a school site, they felt it was appropriate to provide that data. He addressed each of the questions brought up by the board members.

Chris Sark, engineer with Shentel, said they are very aware of who their customers are and how much data they use. The area is surrounded by residential customers and that is why they picked that spot. As coverage needs continue to grow, they can point the antennas towards the city more if needed. Commissioner Smith asked if this is in the city and the city is only benefiting very little and the county benefits more than why isn't it in the county. Mr. Sark said there are customers in the county as well as the city. The location was optimal for the customers surrounding the area.

Commissioner Smith said the Commission has been through other CUPs for other tower sites. He was concerned about this one being on school property. It would be better if it was 100 feet in another direction. Why this particular site? Mr. Sark said the analysis showed data being used requires a specific area. This location optimally addresses where customers are.

Commissioner Eaton asked about the footprint of the location. If the other tower on Senseny Road is approved, is this tower even needed? Matt Butcher, licensed engineer, spoke about work done on other towers, some were located on school properties and specific studies had been done on antenna limitations and exposure levels.

Kathleen Bochert, 909 Allen Drive, stated she lived approximately 400 feet from the intended site of the pole. She asked that the pole not be approved and spoke about health concerns associated with the type of pole. She noted there was a water runoff near the location and the pole would have to be built at a higher point near Cork Street than what is shown in the report.

Commissioner Wolfe asked why no school board members were present. The applicant had stated in the application that there would be someone at the meeting. The parents of the students should have also been informed about the meeting. She asked who would be servicing the pole and how would it be done and if Milestone would have background checks done on any employees that come out to service the site. Mr. Smith said servicing would be coordinated through the school. He noted the graphic of how many people had attended the informational meetings.

Vice Chairman Loring asked if any of the board members or staff had attended the informational meeting. Commissioner Smith said he was there and that the residents had received the invitations two days before the meeting so there were very few residents attending. They had the same concerns that were being brought up. He asked if the statistics applied to adults or children concerning the emissions. The applicant said research has been done on children and adults to ensure the international recommendations on exposure levels were appropriate.

Chairman Slaughter asked if the school board had made a statement about concerns for the health, safety and welfare of the children at the school. Mr. Donahue said he did not believe the current board had but the previous may have about five years ago.

The board members discussed the aesthetics, safety of the pole and risks to the children; the precedent it would set for the city; not having all the information that is needed for the project; and school board members not being present or issuing a statement.

Chairman Slaughter closed the public hearing

*Commissioner Smith made a motion to forward **CUP-16-287** to City Council with an unfavorable recommendation citing that it could negatively impact the health, safety and welfare of those residing or working in the area and would be detrimental to the public welfare or damaging to property or improvements to the neighborhood.*

Commissioner Fieo seconded the motion. Voice vote was taken and the motion passed 6-0.

CUP-16-295 Request of James Testa of Testa, Inc. for a conditional use permit single family detached dwelling at 2905 Shawnee Drive (Map Number 332-03- - 89) zoned Highway Commercial District (B-2). (Mr. Crump)

Mr. Crump reviewed the request and staff report. The previous request had expired and this one was identical to the previous request.

Chairman Slaughter opened the public hearing

No one spoke during the public hearing.

Chairman Slaughter closed the public hearing

*Commissioner Wolfe made a motion to forward **CUP-16-295** to City Council recommending approval 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.*

Commissioner Eaton seconded the motion. Voice vote was taken and the motion passed 6-0.

RZ-16-308 An ordinance to revise the proffers associated with 7.0719 acres of land at 501 West Jubal Early drive (Map Number 230-04 -1) conditionally zoned Highway Commercial (B-2) District. The proffers revision seeks to add telecommunication facilities to the list of uses allowed on the parcel. The Comprehensive Plan identifies the property as a Commerce Center/Corridor and calls for sustaining a friendly business environment. (Mr. Crump)

Mr. Crump reviewed the staff report revising proffers to add a telecommunications facility.

Chairman Slaughter opened the public hearing

No one spoke during the public hearing.

Chairman Slaughter closed the public hearing

Vice Chairman Loring asked if there were height limitations. Mr. Crump said it would be subject to what the current B-2 regulations are.

*Commissioner Smith made a motion to forward **RZ-16-308** to City Council recommending approval subject to proffers offered by the applicant in the document titled "Draft Zoning Proffer Revision" dated May 10, 2005 and amended August 14, 2007, to include telecommunications facilities. Approval is recommended because the request, as proffered, adequately addresses potential impacts associated with the rezoning, represents good planning practice and is consistent with the Comprehensive Plan.*

Commissioner Fieo seconded the motion. Voice vote was taken and the motion passed 6-0.

CUP-16-309 Request of Lynn Koerner of Shentel on behalf of Friendship Volunteer Fire & Rescue Company and the City of Winchester for a conditional use permit for a telecommunication facility at 627 North Pleasant Valley Road (Map Number 175-01-23B) zoned Education, Institution and Public Use (EIP) District. (Mr. Grisdale)

Mr. Grisdale reviewed the staff report and height of the building mounted facility.

Vice Chairman Loring asked where the mechanical units would be located. The Shentel representative said they would be next to the hose drying tower and completely shielded. The roof would support the weight of the tower.

Chairman Slaughter opened the public hearing

No one spoke during the public hearing.

Chairman Slaughter closed the public hearing

*Commissioner Fieo made a motion to forward **CU-16-309** to Council recommending approval 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 recommended approval is subject to the following conditions:*

1. *Submit an as-built emissions certification after the facility is in operation;*
2. *The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use; and,*
3. *Submit a bond at 150% of the estimated equipment removal costs guaranteeing removal of the facilities should the use cease.*

Commissioner Eaton seconded the motion. Voice vote was taken and the motion passed 6-0.

NEW BUSINESS:

TA-16-356 Resolution to initiate an ordinance to amend and reenact Article 14 of the Winchester Zoning Ordinance pertaining to the Historic Winchester District and criteria for granting a Certificate of Appropriateness. (Mr. Grisdale)

Mr. Grisdale stated the amendment adds several words to the ordinance to make sure the criteria for granting a Certificate of Appropriateness from the Board of Architectural Review specifically includes the Historic Winchester District Design Guidelines. This would match the existing language that is already in the ordinance for the Zoning Administrator for administrative approvals to maintain consistency.

*Vice Chairman Loring moved to initiate **TA-16-356**. Commissioner Wolfe seconded. Voice vote was taken and the motion passed 6-0.*

OLD BUSINESS:

None.

OTHER BUSINESS:

SP-16-311 2150 Valley Ave. – minor revision – Burger King. There was discussion about the location of the drive through. Commissioner Eaton moved to approve. Commissioner Fieo seconded. Voice vote was taken and the motion passed 6-0.

ADJOURN

With no further business before the Commission, the meeting adjourned at 5:47 pm.