

## **THE BERKELEY COUNTY PLANNING COMMISSION MINUTES**

The Berkeley County Planning Commission met in a regular session on September 19, 2022 in the Council Chambers at 400 W. Stephen Street, Martinsburg, West Virginia.

### **1. CALL TO ORDER**

The meeting was called to order at 6:02 p.m. by Linda Barnhart, presiding.

### **2. ROLL CALL**

- a. **PLANNING COMMISSION MEMBERS PRESENT:** Linda Barnhart, Vickana Norton, Tim Lewis, Eddie Gochenour, and Eric Goff
- b. **MEMBERS ABSENT:** Nic Diehl and Dan Gantt
- c. **STAFF:** Laura Hoffmaster, Senior Planner; Monique Boots, Planner II; Sarah Sandri, Administrative Assistant; Doug Smith, County Engineer; Jeff Mauzy, Assistant Legal Director.

### **3. APPROVAL OF THE AGENDA**

**ACTION TAKEN:** The motion was made by Eric Goff and seconded by Vickana Norton to approve the agenda. Call for question. The motion carried unanimously.

### **4. SUNSHINE LAW SPEAKER: None**

### **5. APPROVAL OF MEETING MINUTES**

- a. **ACTION TAKEN:** The motion was made by Eric Goff and seconded by Eddie Gochenour to approve the September 6, 2022 meeting minutes. Call for question. The motion carried unanimously.

### **6. PUBLIC HEARINGS**

#### **REQUEST FOR MAJOR PLAN CHANGE APPROVAL**

- a. **The Lakes at Martinsburg, Phase 1 – Plan Change #5, File #2204-102**

The site is located along Weaver lane, approximately 0.5 mile west of its intersection with Williamsport Pike (US Rt. 11).

The Major Plan Change proposes the addition of 7 single family lots (188-194) on 1.6 acres, to be served by public water and sewer

Laura Hoffmaster read the description and project notes.  
Ryan Perks was present representing the project.

Public Comment: Ken Tucker, resident in The Lakes, stated that he is concerned about the adjacent property because currently there is criminal activity going on. He asked if the property would be cleaned up so it is safe.

Ryan Perks stated that the property is undeveloped and he will pass along the concern to the developer and he stated they would try to get the brush cleaned up. He stated that the 7 lots being added will clear about 100 feet from the roadway and they will properly clear back a little further. He stated that it is the residual property and it is in a natural state.

Linda Barnhart asked if it is planned for development.

Mr. Perks answered that it is not at this time, but it could be in the future.

Linda Barnhart asked if Mr. Tucker has talked to anyone from the HOA.

Mr. Tucker answered that he is attending the meeting because the developer has not have responsive to the residents and the developer has violated ordinances concerning Stormwater management. He stated there are sinkholes developing. He stated that they filled the sinkhole with cement and did not alert the county or have provided documentation where the sinkhole is and where the others are developing. He is concerned that the developer does not care about the residents of the Lakes.

Doug Smith stated a few months ago the two amenity ponds went dry and there was a sink hole that was remediated, but there was never any notification that DEP was aware, which is required. He stated that DEP has been involved as well as MS4. He stated that he was told that there might be other sinkholes that may prevent the ponds from holding water. He stated that the original approvals, the two northern ponds were called "amenity ponds/ landscaping" and they were not for Stormwater management control. He stated that whether they stay wet or not, the county has no jurisdiction over the landscaping ponds. He stated that they are most concerned with the control structure of the control ponds discharge according to the Stormwater Management Ordinance. He stated that if there were sinkholes, they would have to provide the material in the ground to allow the water to stay in the landscaping ponds. He stated that the question is if the ponds were constructed with a liner or not. He stated they have not been provided with any test or geotech report from the engineer or the developer. He stated that he has reached out to them to ask for that information and he did review the original drawings from 2005. He stated he has not heard anything since. He stated that he cannot say if they are violating Stormwater management because the amenity ponds were called landscaping ponds and have no control structures. He stated that there has been no asbuilts provided to the county, so what was constructed cannot be checked because all he has is the original plans. He stated that the bonds still exist, there are no asbuilts and there is no more information at this point. He stated that he reached out to the developer and Gordon for the information and he has not received anything. He stated that DEP has been out there and they are addressing the sinkholes that was remediated without a report. He stated that he would want to see a geotechnical report.

Mr. Perks stated that there has been site meetings with MS4 and Kinsley is getting ready to respond to their concerns for the storm pond. He stated there has been no other sinkholes found in the ponds at this time.

Mr. Tucker stated that he read the documentation that the ponds do stipulate that the amenity ponds need to be wet and they are designed to be scenic not dry, empty ponds. He stated that documents stated there would be "glimmering lakes" that the residents could walk around, but the pods are empty. He stated there are 4 ponds, two are amenity and the other two are Stormwater Management ponds because they have Stormwater drains going into them. He stated there should have been a liner in order to prevent the ponds to leak and erode the limestone under the ponds. He stated that the County's Stormwater Management has issued a violation against the developer, Kinsley. He stated they required them to drill to see what the sediment make up is to see if there was a liner put in.

Linda Barnhart stated that would not have been the county, it would have been MS4.

Doug Smith stated that MS4 has asked for that, but have not had the county or engineering involved and they are not keeping him in the loop.

Mr. Tucker stated that he represents the residents who are upset and disappointed because Kinsley has not done anything about the issues. He stated that he has had conversation with Mr. Allison and he stated he was not aware of any sinkholes and a week later he was called and told that sinkholes were discovered. He stated that Mr. Fink has informed the residents there will be water in the ponds when it rains, even though is has been an extremely wet summer. He stated that before the development started there was 10 feet of water in the pond, and 7 feet of water after it started. He stated as the development continues there is less and less water in the pond, 3 of them being empty and the last pond has 18 inches of water right now. He stated that it is smelly, growing weeds and is becoming a swamp. He stated that several people have paid premiums to sit on the body of water. He stated that the residents are very disappointed. He stated that there is no indication that there was a liner so the water is leaking and creating sinkholes in several places.

Linda Barnhart stated that she does hear what he is saying, but the portion that is in front of the Planning Commission is what they have to vote on.

Doug Smith stated that they need to speak with the HOA and it may be a civil matter. He stated that the issue is they want wet ponds, but the only piece that was reviewed in 2006 was the Stormwater plan that if the dam breaches will if affect the bottom pond, and they looked at the pods as nothing more than has a pool surface of water on it and if it is controlled safely. He stated that is up to the developer

and the HOA to make sure that it stays wet and it is located in the Convents and Resections and the county would not go in there for anything because Stormwater quality was not a thing when the ponds were approved.

Ken Tucker stated that pre design and the post design clearly stipulates that the ponds were engineered to retain no less than 7.2 feet of water. He stated at present Kinsley controls the HOA and it is their responsibility to mitigate the sinkholes and the lack of water in the wet ponds. He stated that it is an injustice and there are millions of dollars that the homeowners have invested into something that has not been delivered.

Linda Barnhart stated that they can only look at the section brought to them tonight and asked Ryan Perks not to just pass along the information, but asked if there is any letter that the Planning Commission can issue to them that would be more forceful about getting the issues resolved.

Jeff Mauzy stated that the residents should be talking to a private attorney to deal with the issues with a civil complaint.

Eddie Gochenour asked why the homeowners concerns have not been meet.

Ryan Perks stated that the developer has been talking to MS4 and DEP to look into the concerns.

Eddie Gochenour stated that they need some resolution on the issues. He stated that he wishes to table the project to give and opportunity for MS4, DEP, Integrity Engineering, County Engineering, and someone from the neighborhood to sit down and come to a conclusion on what needs to be done to solve the issues.

Laura Hoffmaster stated there would be another public hearing and the project would come back before the Planning Commission 2 more times.

**ACTION TAKEN:** The motion was made by Eric Goff and seconded by Eddie Gochenour to close the Public Hearing. Call for question. The motion carried unanimously.

**ACTION TAKEN:** The motion was made by Eddie Gochenour and seconded by Eric Goff to table the decision of the Major Plan Change and advancement to the Final Plat stage. Call For question. The motion carried unanimously.

#### **REQUEST FOR WAIVER**

**b. Overlook at Riverside Apartments, Phase II, File# 2207-234**

The property is located on the east side of Williamsport Pike (US 11) and south of I-81.

The project proposes 6 apartment buildings 2 carriage buildings (152 units) with a dog park, pickle ball courts, pavilion, and playground, on 7.24 acres, to be served by public water and sewer.

Laura Hoffmaster read the description and project notes.

Ed Schreiber was present representing the project.

There were no comments from the public.

Tim Lewis asked about the major plan change because he wanted to make sure the proposed recreational area would not be able to be cut from the plans.

Laura Hoffmaster answered that the Major Plan Change is an addition by the existing apartments and that the rec area could not be taken out of the plans.

Eddie Gochenour asked if there was proper turning distance for emergency vehicles.

Doug Smith answered that they are the proper distance and emergency vehicles should have plenty of room to maneuver.

Laura Hoffmaster stated that there are no dead ends.

**ACTION TAKEN:** The motion was made by Eric Goff and seconded by Eddie Gochenour to close the Public Hearing. Call for question. The motion carried unanimously.

**ACTION TAKEN:** The motion was made by Eddie Gochenour and seconded by Eric Goff to approve the waiver to Section 801, Table 8-1A, subsection #7, to allow for 2.1 spaces, plus 1 spaces per employee, plus 10% additional spaces for guests. Call for question. The motion carried unanimously.

**c. 119 Kitchen Orchard Rd., File# 2207-218**

The site is located 675' east of the intersection of Koontztown Road (WV Sec. Rt. 11/5), on the north side of Kitchen Orchard Road (WV Rt. 1).

The developer is proposing the creation of a 1.37 acre parcel (Lot #1), to be served by private well and septic, and the creation of a 3.62 acre residue, which is currently served by private well and septic.

Monique Boots read the description and project notes.  
Dan Llewellyn was present representing the project.

Public Comment: Thomas Evans, resident on Kitchen Orchard Rod, stated that the project is well under to 2 acre minimum. He asked if the parcel would be large enough for a septic. He also stated that he is concerned about stacking of homes in his neighborhood.

Laura Hoffmaster stated that the lot size is for process, but the health department allows 1.3 acres for well and septic. She stated that the new lot would have its own well and septic with reserve area.

Doug Smith stated that the lot will be large enough to hold its own well and septic.

**ACTION TAKEN:** The motion was made by Eric Goff and seconded by Eddie Gochenour to close the Public Hearing. Call for question. The motion carried unanimously.

**ACTION TAKEN:** The motion was made by Tim Lewis and seconded by Eric Goff to approve the waiver to Section 305.4.1 of the Berkeley County Subdivision Ordinance (2009) requiring a 2 acre minimum lot size, in order to proceed through the Preliminary/Final process. Stormwater management shall be provided, in accordance with Article 1.D.1(b) of the Stormwater Management Ordinance (2016), should the total impervious area of both parcels exceed 5,000 sq. ft. Call for question. The motion carried unanimously.

**REQUEST FOR FINAL PLAT APPROVAL**

**d. Estates at Edgemoor, Phase 1, Lots 1-19, 50-55 & 71-89, File# 2204-115**

The project is located off of Specks Run Road (WV Rt. 28), approximately 3 miles from Winchester Avenue (U.S. Route 11) and approximately 3.9 miles from Interstate-81.

The final plat proposes 44 single family lots, on approximately 70 acres, to be served private well and public sewer.

Monique Boots read the description and project notes.  
Mike Roberts was present representing the project.

Public Comment: Vickie Hutzler, resident in Berkeley County, stated that she is concerned about the amount of building in the county and how it is effecting the schools. She asked if there could be any limitations on building such as solar panels.

Linda Barnhart stated that without zoning in the county there is no limit to how many houses can be built if the ordinance is being followed. She encouraged residents in Berkeley County to attend School Board meetings and address their problems with the school, since the Planning Commission cannot mandate new schools.

Laura Hoffmaster stated that the Planning Department does collect information to send to the schools, but were told that they did not need the school impact forms that are collected.

David Homes, resident on Karen Way, asked if there would be any updates to the roads, including a turning lane or traffic signal.

Doug Smith answered that there is not enough traffic being added, so no upgrades are required by Department of Highways.

David Homes asked why the entrance could not be moved because it is currently on a sharp turn.

Doug Smith answered that DOH goes out and approves the entrances. He stated that they pick the safest places with the best site distance. He stated, in this case, there was not much to work with and DOH cannot deny them access to their property.

Laura Hoffmaster stated that she doesn't know what DOH could have asked because the shape of the parcel and width, there is not much there to work with.

David Homes asked if there is a report on how DOH came to their decisions.

Laura Hoffmaster answered that is it located in the Traffic Impact Study and the entrance permit will lay out the requirements.

David Homes asked about the school stud and school bus issues.

Linda Barnhart stated that would be a question for the School Board and that she hopes people realize that the Planning Commission does not have authority over many things and they have the public hearings to hear public concerns.

Laura Hoffmaster stated that school impact study was done at the sketch phase in 201. She stated that those impact forms used to be given to the school board for them to use for their growth studies, but then Planning Department was told they do not need them anymore that they do their own studies.

Mr. Homes asked about the wells and if there was a well study done.

Doug Smith stated there was a geological study done and it came back okay.

Mr. Homes asked if there was a noise ordinance and what the working hours were because they are working at 6AM.

Laura Hoffmaster stated that working hours are from 7-10PM. She stated that he can submit a complaint form that can be sent to County Council.

Mr. Homes asked if there was any upgrades for the internet.

Eddie Gochenour stated that he could get Mr. Homes in touch with the IT Director and see what he knows about the upgrades.

Mr. Homes asked about the pond and if there is any protection for the ponds.

Doug Smith stated there is a sediment erosion plan that was approved with the Preliminary Plan and the ponds are to be protected and they are not using them as control ponds. He stated that they are probably sinkholes because it shows sinkholes next to the ponds on the Preliminary Plans.

**ACTION TAKEN:** The motion was made by Eric Goff and seconded by Eddie Gochenour to close the Public Hearing. Call for question. The motion carried unanimously.

**ACTION TAKEN:** The motion was made by Eddie Gochenour and seconded by Eric Goff to approve the Final Plat. The Final Plat surety amount is \$2,098,176.00, which is currently held by the Engineering Department, as a part of the Grading Permit (#2204-0130). Call for question. The motion carried unanimously.

**7. STAFF/ COUNSEL DISCUSSION/ACTION/ MOTION**

**8. ADJOURNMENT**

**ACTION TAKEN:** The motion was made by Vickana Norton and seconded by Eric Goff to adjourn the meeting at 7:12 PM. Call for question. The motion carried unanimously.

Respectfully submitted,  
Sarah Sandri  
Administrative Assistant