

**GEORGETOWN-SCOTT COUNTY PLANNING COMMISSION  
REGULAR MEETING  
MINUTES  
April 9, 2015**

The regular meeting was held in the Scott County Courthouse on April 9, 2015. The meeting was called to order by Chair Rob Jones at 6:00 p.m. Present were Commissioners Jeff Caldwell, Janet Holland, Regina Mizell, Byron Moran, John Shirley, Steve Smith, Mark Sulski, and Frank Wiseman, Director Joe Kane, Planner Matt Summers, Engineer Brent Combs, and Attorney Charlie Perkins.

Motion by Holland, second by Shirley, to approve the March invoices. Motion carried.

Motion by Mizell, second by Wiseman, to approve the March 12, 2015 minutes. Motion carried.

With the change of hearing Traditions II Apartments (which has been changed to Heritage Apartments at Villages of Falls Creek) before the Hill-n-Dale Amended application, motion by Mizell, second by Moran, to approve the April agenda. Motion carried.

Postponements/Withdrawals

The Dollar General Store application was postponed to a special meeting on Thursday, April 16, 2015, and the Cox-Smith Zone Change application was postponed to the May meeting. Motion by Shirley, second by Holland, to approve the two postponements. Motion carried.

Consent Agenda

There were no items for the Consent Agenda.

PSP-2015-03 Thoroughbred Acres Unit 6-C – Preliminary Subdivision Plat for 14 single-family units on 3.82 acres zoned R-3 PUD, located on the west side of Pavilion Way between Back Stretch Drive and Furlong Court.

Commissioner Holland recused herself from discussion and voting due to her position with Whitaker Bank.

Mr. Kane reviewed the staff report, including the issues regarding the utility easement and tree preservation area. He stated that the units are townhome-type units on single-family lots, which conform to the overall plan to provide a mixture of housing types. There will be a shared maintenance agreement for the private street and the common areas at the entrance and perimeter.

The application was continued from the previous meeting due to parking concerns. Since no on-street parking is permitted on private streets, the applicant has shown additional parking in an overflow lot in the rear of the site, and also on individual lots. Each unit will have a one-car garage and a parking pad either in the front of the unit or to the side. Sidewalks are now shown on one side of the street, and the road has been widened to the private road standard of 25'.

Mr. Kane stated that staff is still concerned about parking in front of the units and the tree preservation area. He felt that, in measuring the tree lined area during a site inspection, units 6, 7, and 8 will take out several mature trees. He suggested either adding a condition of approval prohibiting the removal of any mature trees and that those trees will be protected during construction, or request a plan showing which trees will be removed.

He recommended approval of the preliminary plan because the area was previously approved for townhome development, and these units are essentially townhomes. He also recommended approval of the six (6) requested variances, which are required only because the property is being subdivided and not developed under one ownership.

He noted conditions #3 requiring 20' of paved area behind the back of curb for off-street parking and #7 requiring a homeowner's association. He also recommended that the location, construction, and maintenance of the trail shown on the concept plan be determined and noted on the plat, and that the trail not be fenced, but left open for public use.

He also recommended that condition #15 regarding the tree protection area be amended to allow the removal of undergrowth and scrub up to a certain distance, but that mature trees be protected.

Commissioner Shirley asked if staff could draft an agreement or plan where if any mature trees are removed, that number of trees be replaced elsewhere in the development. Mr. Kane agreed with that suggestion.

Commissioner Shirley also expressed concern about emergency access and the turn-around. Mr. Kane stated that the Fire Department reviewed the plan and asked for a fire hydrant by the turn-around.

All those intending to speak before the Commission were sworn in by Mr. Perkins.

Rory Kahly, EA Partners and representing the applicant, agreed with the fifteen (15) conditions of approval. He stated that the location of the trail will be determined and noted on the Final Plat, but that construction of the trail is not the responsibility of the applicant. Regarding the tree protection area, he stated that the area had not yet been surveyed, but if mature trees need to be replaced, the definition of a mature tree would need to be defined since there is so much scrub growth.

Mr. Kane stated that there is an allowance for saving trees in the Landscape Ordinance. Discussion continued on the tree area.

Jason Lanham, Final Turn resident, expressed his opposition to the development because he purchased his home under the impression that there would not be homes built on his tract because of the power lines. He also felt that the developer is building quantity instead of quality, and that the value of his home would decline.

Mr. Perkins stated that since the lots haven't been surveyed yet, details of the agreement on the tree protection area can be decided at the Final Subdivision Plat stage. Discussion continued on the size and type of trees in the area.

It was clarified that the trail in question is part of a larger trail system for which the applicant is not responsible. Mr. Kane stated that the site was identified as a possible corridor for a regional trail which will probably be constructed with grant money and the easement can act as a match. He agreed with Mr. Kahly that a general trail location can be determined for which they can provide a public access easement. Maintenance will be determined when the trail is funded and built. Mr. Perkins stated that maintenance can also be addressed at the time of final approval.

After further discussion, it was agreed that condition #9 be amended to read "Trail and public access easement location shall be dedicated on the Final Plat."

Mr. Lanham expressed concern about the units becoming rental property.

**Motion by Mizell, second by Moran, to approve the Preliminary Subdivision Plat subject to the fifteen (15) conditions of approval, with #9 amended to read that the trail and public access easement location shall be dedicated on the Final Plat; compliance with #15 will be approved by staff or if not approved, brought back to the full Commission; and including the six (6) requested variances. Motion failed 2-4, with Wiseman, Sulski, Shirley, and Caldwell dissenting.**

PSP-2015-05 Strunk Property – Preliminary Subdivision Plat for eight (8) residential lots including one common area lot and one amended reserved tract for a previously approved cluster subdivision located on the east side of Stone Road and south of Paris Pike.

Mr. Kane reviewed the staff report, including the changes in the property since the original cluster subdivision was approved in 2003 and the changes in our regulations since the 2003 approval. Staff determined that this is an amended subdivision plat that falls under the regulations in place at the time of approval.

He noted the lake on the common area tract that will be maintained by the future property owners, the proposed public road, the proposed private access easements, and the undersized tract on Paris Pike that will need to be consolidated with tract 8. He then reviewed the conditions of approval.

Tim Strunk, applicant, agreed with the conditions of approval.

Chairman Jones asked if there was enough buildable area (outside the floodplain) on tracts 6 and 7. Mr. Strunk replied that there is plenty of space.

Jimmy Dean Walters, Paris Pike resident, expressed concern about the proposed road causing stormwater to run onto his property. Mr. Combs stated that Mr. Walters thought the proposed road would be off U.S. 460, but it will be off of the existing road, which is off Stone Road.

**Motion by Holland, second by Sulski, to approve the Preliminary Subdivision Plat subject to the fourteen (14) conditions of approval.  
Motion carried.**

FSP-2015-06 Victoria Estates – East Kentucky Paving – Final Subdivision Plat for four (4) tracts for equestrian use on 60.185 acres of a 919-acre parent tract, located on the southern portion of Victoria Estates, west of Georgetown, north of U.S. 460 E. (Frankfort Road).

Commissioner Holland recused herself from discussion and voting due to her owning property in Victoria Estates.

Mr. Kane reviewed the staff report, stating that the proposed tracts will be for equestrian use only and have no dwelling credits. He stated that typically there would be no major concerns with the plat, but the homeowner's association has raised concerns about the zoning and whether the owners of these new tracts will be subject to the HOA's restrictive covenants. He noted that since 1990, the entire 919 acres of the Victoria Estates property has been zoned R-1A. The official zoning map indicates much of the acreage as still zoned A-1, and that will be corrected.

Mr. Kane stated that the Homeowners Association deed restrictions were approved by the Planning Commission Director. He reviewed the documents and could not find where it specifically stated that the entire 919 acres shall be included in the HOA. He felt that at this point, the Commission cannot make inclusion in the HOA a condition of approval for these equestrian tracts.

He recommended approval of the plat, but stated that conditions of approval #2 and #3 regarding inclusion in the HOA should be omitted, leaving that issue a matter for the Court to decide, and condition of approval #4 regarding bonding of the road should be omitted, as bonding of private roads is not required.

He further stated that staff does not have a master plan for the development and he requested that the applicant submit one at some point before any new residential lots are reviewed and approved. He also requested a plan for when the roads will be completed.

Commissioner Shirley asked if the property in question could ever be something other than for equestrian use since it is zoned R-1A. Mr. Kane stated there would have to be an amendment to the master plan and any plans would have to come back to the Commission for approval. On the plat in question, it states that it will not be used for residential use.

Commissioner Jones asked if the mobile home on the property will remain. Kelly Richard, representing the applicant, stated that the applicant wishes to keep the mobile home there for a tenant worker. It was agreed that the existing mobile home can remain on the property.

Jackie Ruth, applicant, stated that the mobile has been there as long as he could remember, and it is important for someone to stay on the property for the safety of the horses.

Bruce Lankford, representing the applicant, agreed with the master plan requirement, that the entire 919 acres is R-1A, and that the construction entrance will remain. He stated that the HOA does not object to the plat, but has concerns that are being litigated in Scott Circuit Court. He requested that the Commission deal with the subdivision plat only. He stated that the only issue of debate is whether there is an easement for the equestrian trail on the plat. He stated that Mr. Ruth agrees with the conditions of approval with the removal of #2, 3, and 4.

Nathan Billings, representing the HOA, stated that he does not intend to address issues being solely decided by Scott Circuit Court. He reviewed the R-1A zoning, which allows single family residential and planned unit developments. He stated that the proposed subdivision plat proposes to remove 60 acres in four parcels intended to be used as commercial equine

property. It is not going to remain agriculture in the sense of cattle farming, corn, etc. It was always intended for the non-residential lots to be used for agriculture, as cited in the minutes from the meetings on the application. None of the minutes refer to a commercial agricultural use. He stated that the end goal is to have an economically-viable subdivision where lots will sell.

Mr. Billings stated that their position is that the subdivision is not inappropriate under the zoning laws of Kentucky, but that the subdivision plat should be approved provided other conditions are met. He then reviewed those conditions and related documents. He contended that the subdivision was intended to be a "Mallard Point-type subdivision," which focuses on single-family residential and the rural or natural resources of the area. He contended that the words "the property" can only mean in the context of the original zone change application from A-1 to R-1A the entire 919 acres for which the zone change was sought. The deed restrictions were important because the infrastructure and urban services have to be provided by a private homeowners association. The responsibilities of the HOA include the gated entryway, private roads, the right-of-way, private trails, a lake, damn, common amenities such as the pavilion at the damn, and the private sewage treatment and disposal plant.

Mr. Billings continued, contending that it is critical that every lot owner pay dues to the HOA for the maintenance responsibilities, and he listed the benefits that the owners of the equestrian lots receive from the HOA. He also stated that "common area" as noted on the original conceptual plan means for the benefit of all the homeowners.

He then addressed the construction entrance, the trailer, and the horse trail, but stated that the three main concerns are: 1) the property should be shown as rezoned, 2) the property should be subject to per lot HOA dues obligations, and 3) maintenance of the roads needs to be addressed on the plat.

Mr. Lankford stated that the issues discussed by Mr. Billings are the issues that are being litigated in Scott Circuit Court. He stated that the master plan being requested will be defined by Planning staff, not the HOA. He stated that the equestrian use is a non-conforming use that continues, even in an R-1A. He stated that the sewage treatment plan that Mr. Billings described was changed early in the development of the property, and that the easement in question will be put on the plat.

Mr. Lankford agreed with removing conditions #2, 3 and 4.

Frank Carter, Winding View Trail resident in Victoria Estates, expressed concern about the bad condition of the roads, and the notification process of the subdivision.

Chairman Jones asked the residents to only express comments about the subdivision of the 60 acres in question.

Jonathan Buckley, Victoria Way resident, felt that if the plat is approved, it will change the character of the subdivision from residential to residential and commercial. He stated that there are recorded restrictions making the development residential, giving every homeowner standing to sue. He also stated that the HOA documents require all lots to be connected to sewer. Mr. Buckley suggested delaying action to give the HOA and Mr. Ruth time to work out details of a plan.

Kathy Gibson, White Oak Road farm owner, expressed concern about the 1,000' radius line which determines property owners who are to be notified of the proposed plan. The line includes part of her property and she was concerned that it was a buffer of some kind. She was also concerned about maintenance of the fence.

Billy Long, Jr. property owner across U.S. 460, also asked about the 1,000' notification line. Mr. Kane clarified that the line is only there to show what property owners needed to be notified of this proposed project and this hearing.

Carrie Self, White Oak Road resident, expressed concern about potential drainage into the pond and the garden on her property if any grading or construction is proposed. Mr. Perkins stated that nothing is being potentially approved that will affect her property in any way. He stated that the application is not a zone change or development plan, but simply a subdivision plat with a restriction that it will continue being used as it is currently.

Mr. Buckley stated that it is not an agricultural use, but a commercial use that involves horses. He felt that the Commission should address that issue or the matter will go to Circuit Court. Mr. Perkins again clarified that nothing is being changed with this application except a division of property.

Guy Goodner, Victoria Estates resident, agreed with Mr. Billings and expressed concern about the equestrian use.

John Rosquist, Victoria Estates resident, expressed support of the equestrian use, but wanted the lot owners subject to the HOA regulations.

Judy Rembacki, Victoria Estates resident, felt that the HOA board members should have identified themselves as such. She expressed support of the equestrian use.

Commissioner Shirley expressed concern about the zoning issue, as the property is zoned R-1A but being used as an equine operation. Mr. Kane stated that it would be considered a lawfully non-conforming use since it has

been on-going and pre-dates the original re-zoning. He felt that it can't be expanded unless it received Board of Adjustment approval. Mr. Perkins added that a distinction has never been made between horses, cows, or other animals or crops on agriculturally-zoned land. He stated that the concerns of the homeowners are legitimate but not for consideration by the Planning Commission.

Commissioner Wiseman stated that he has concluded that there is no difference between a horse farm and an equestrian operation.

Mr. Billings contended that this application is not a simple subdivision plat. He felt that it is a privately-owned agricultural use for profit rather an agricultural use to benefit the owners, and continued to argue the difference. He stated that they wish Mr. Ruth to profit from the sale of these tracts for use as an equestrian center so that he can complete the roads in the subdivision, but again stated that the conditions requested by the HOA should apply.

Mr. Perkins stated that the Commission is not legitimizing a non-conforming use, but to avoid that, he suggested adding a note to the plat stating, "Approval of this subdivision plat does not include approval of the existence or recognition of the existence of a non-conforming use, or to authorize any other specific use."

Discussion continued on whether the tracts in question are officially designated "common area."

Chairman Jones felt the application should be continued.

**Motion by Sulski to continue the application until the legal issues are worked out.**

Mr. Perkins stated that those legal issues need to be defined. Conditions #2, 3, and 4 were discussed as being the issues in question. Mr. Perkins stated that nowhere does it say that undeveloped farming property would be put into a Homeowners Association.

**Motion by Wiseman, second by Mizell, to approve the Final Subdivision Plat subject to the six (6) conditions of approval (removing conditions #2, 3, and 4 from the original nine), plus the seventh (7) condition that the truck trailer entrance be removed from Tract #3; the eighth (8) condition that parcel A is a dedicated portion of the equestrian easement and must be shown as such on the plat; and the ninth (9) condition that approval of this subdivision plat does not include recognition or ratification of the uses on Tracts #1-4.**

Commissioner Sulski retracted his motion.



**Commissioner Wiseman's motion carried unanimously.**

Mr. Perkins stated that the applicant will sign the conditions of approval as provided for the meeting, but the amendments and additions are part of the record and will be added later.

It was noted that a master plan will be required before any further subdivision of residential lots can occur.

PDP-2015-08 Heritage Apartments – Preliminary Development Plan for 80 apartment units in 10 buildings, located south of the townhomes on Falls Creek Drive in the Village of Falls Creek Subdivision.

Chairman Jones recused himself from discussion and voting.

Mr. Summers noted for the record the letter submitted by Mark Smith informing staff of the change of name of this development to Heritage Apartments at the Village of Falls Creek.

Mr. Summer then reviewed the staff report, including the parking, sidewalk, and landscaping issues. He then discussed the density issue. If this application is approved, the total number of units approved will exceed the number allowed by 23 units. He recommended, and the applicant has agreed, to transfer 23 multi-family units that aren't be used in the mixed-used center to this development to bring the overall Falls Creek development into compliance with the original zone change conditions.

He then noted that the design guidelines for other Falls Creek developments will apply to this project also.

He recommended approval, including the waiver to move the unused units from the mixed-use center to this development, and the ten (10) conditions of approval.

Fred Eastridge, representing the applicant, agreed with the conditions of approval. He noted that the 2014 floodplain updates did not match the exact topography of the site. The site was surveyed and the change was approved by FEMA. The floodplain shown on the plat is correct.

Joey Smith, applicant, stated that during the recent heavy flooding, there was no standing water on the building site.

**Motion by Moran, second by Mizell, to approve the Preliminary Development Plan subject to the ten (10) conditions of approval, and**

**including the waiver to transfer the 23 unused units in the mixed-use center to this development. Motion carried.**

ZMA-2015-07 Hill-n-Dale Amended – Rezoning request for 19.34 acres from B-4 (Community Commercial) and 5.22 acres from R-2 (Medium Density Residential) to a combined 24.56 acres in R-2 PUD (Medium Density Residential Planned Unit Development). PUBLIC HEARING

Chairman Jones stated that the applicant is Ball Homes, and because of his relationship with them, he recused himself from discussion and voting.

Vice Chair Shirley opened the public hearing.

Mr. Kane reviewed the staff report. He stated that the plan is strictly a concept plan for the purpose of the zone change, but it does meet the requirements regarding parking, etc. He noted that there is no vehicular connection to Etter Lane. He discussed issues regarding density, open space, the connection to Gano Baptist Church, a potential connection to the west, and a connection from the entrance to the greenbelt.

He stated that the rezoning request is in conformance with the Comprehensive Plan. He noted that R-2 zoning limits the number of units per building to six, and the applicant is requesting a waiver to allow buildings of up to 28 units per building. He recommended approval subject to the 12 conditions of approval, and reviewed the site specific conditions.

Commissioner Sulski expressed concern about the connection to Bevins Lane. Mr. Kane stated that the bypass has limited access, so another entrance/exit to the subdivision is important.

Condition #6 regarding the connection to Etter Lane was discussed. It was agreed to remove that condition.

Nick Nicholson, representing Ball Homes, applicant, agreed with the removal of condition #6. Regarding the concern about traffic on Bevins Lane, he stated that the projected traffic is 71% less than the projection for the previous plan, and the access to Bevins Lane was included on that plan. He felt that most people will use the main entrance with the traffic light. He asked that condition #5 regarding the provision of an 8' wide multi-use trail connection be amended. He stated that they don't know exactly where the trail will be located, so he suggested the wording, "The location and responsibility for installation of the 8'-wide multi-use trail to connect to the greenbelt will be determined at the time of the Preliminary Development Plan."

With no further comments, Vice-Chair Shirley closed the public hearing.

**Motion by Mizell, second by W. Wiseman, to recommend approval of the rezoning request from B-4 and R-2 to R-2 PUD on the grounds that it is consistent with the Comprehensive Plan, and subject to the eleven (11) conditions (#6 excluded), and the amendment of condition #5, to read, "The location and responsibility for installation of the 8'-wide multi-use trail to connect to the greenbelt will be determined at the time of the Preliminary Development Plan." Motion carried 6-1 with Wiseman dissenting.**

PDP-2015-09 Kocolene Convenience Store – Preliminary Development Plan for a 4,250 sq. ft. gas station/convenience store with gas pumps and parking, located in the southwest corner of the Falls Creek Development, east of U.S. 25 N. (Cincinnati Road).

Commissioner Shirley recused himself from discussion and voting.

Mr. Summers reviewed the staff report, including issues regarding vehicular and pedestrian access, landscaping, B-4 standards, parking, and signage. He reviewed the requested waivers and justification for approving them.

He recommended approval, including the four requested waivers, and subject to ten (10) conditions of approval. He noted condition #9 requiring any freestanding sign to be co-located on the freestanding sign for the gas station at the intersection of U.S. 25 and Falls Creek Drive.

He noted that the property owner to the south is requesting access to Falls Creek Drive. Staff recommends that that request be considered in the future.

Commissioner Holland asked about the shrubs along U.S. 25. Mr. Summers stated that special note was made in the zone change that the commercial area of Falls Creek be screened from the west and the Scott County Park. A 3' hedge along with a three-board plank fence will be constructed along U.S. 25.

Commissioner Sulski asked about the retaining wall on the west side. Mr. Summers explained that a retaining wall is necessary because U.S. 25 sits higher than the gas station.

Commissioner Holland asked about the high pressure gas line. Mr. Summers stated that the fire department was present at the TRC meeting and had no concerns with it.

Fred Eastridge, representing the applicant, stated that the Falls Creek Drive right-of-way will be extended so that access can be made to the property owner to the south. He agreed to the conditions of approval.

Mr. Perkins swore in Ralph Ruschell, representing Whitaker Land Company, the property owner to the south. Mr. Ruschell stated that their property is farmed and will continued to be farmed for the foreseeable future. They have asked for access to Falls Creek Drive (at no charge) in order to have access to U.S. 25, and would like that to be a condition of approval.

Doug Smith, applicant, stated that he has no problem with granting access, but does not wish to pay for the road.

**Motion by Caldwell, second by Wiseman, to approve the Preliminary Development Plan subject to the requested waiver and three variances, the ten (10) conditions of approval, and an eleventh (11) condition that the southernmost right-of-way on Falls Creek Drive will coincide with the Whitaker property line. Motion carried.**

Landscape Ordinance Amendment – PUBLIC HEARING

The Commission requested that the public hearing be continued to the May meeting.

Chairman Jones opened the public hearing. The public hearing was continued to the May meeting.

Zoning Ordinance Text Amendment

Mr. Kane reported that the Winding Oaks zone change, for which the Commission recommended denial, has been forwarded to Fiscal Court. The *Zoning Ordinance* states that Fiscal Court must hold their own public hearing, but after further research, it has been found that that is contrary to State law. Mr. Perkins stated that they have always had the option of holding their own public hearing, or adopting the findings from our public hearing, or making their own findings from our public hearing that are different from ours.

Mr. Perkins stated that the Commission can hold a public hearing to amend the ordinance, or, because it is contrary to law and has no effect, leave it as is.

The meeting was then adjourned.

Attest:

  
Charlie Perkins, Secretary

Respectfully,

  
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Rob Jones, Chair