

Minutes of the June 25, 2008 Planning Commission

Meeting called to order at 6:04 P.M. by Chairman Toby Gearhart. Planning Commission members Martin Sokolich, Margaret Haven (out at 7:37), Jeff Garrett (in at 6:11), and Mickey Newport were present. The following were also in attendance: Missy Vanskiver, Asst. Clerk; Joanne Stepp; Todd Elliott; Archie Carroll (out at 7:50); John Hurley; Mark Donaldson; and Nancy Gearhart (in at 6:16).

Approval of the Minutes

A motion to approve the minutes of May 28, 2008 was made by Margaret, seconded by Martin, unanimously approved.

Toby recommended addressing the New Business items first due to the anticipated length of discussion time concerning Old Business items.

New Business

Building Permit/Design Review – 109 Maple Avenue – There was some discussion concerning the house and the building permit. A motion to approve the building permit was made by Margaret, seconded by Martin, unanimously approved.

Building Permit/Design Review – 205 Park Avenue – John Hurley gave an overview of the building permit, including the exterior of the pole building. There was some discussion and a motion to approve was made by Martin, seconded by Margaret, unanimously approved.

John Hurley asked about the status of 207 Park Avenue. Toby gave an overview of the situation, explaining that the Town Manager is working with the property owner to resolve the matter.

Building Permit/Design Review – 208 Caroline Avenue – Todd Elliott presented plans for new construction at 208 Caroline Avenue. Approvals have already been received for the demolition of the existing structure and subdivision of the property. Missy asked if the design would be the same for both houses. Mr. Elliott said yes. Missy asked the Planning Commission if they would approve this design for both houses and both building permits. There was discussion about the address of the newly created lot. Martin made a motion to approve the design and building permits for both structures at 208 Caroline, seconded by Margaret, unanimously approved.

Town Manager's Report

Missy gave the Town Manager's report because Joe was attending the MML Convention.

Building Permits Report – There has been some building permit activity.

Development Projects

Weese Town House Project – There is nothing new to report on this project.

Ridgely Park – Per Joe's last conversation with Steve Horne, Ridgely Park is still 'hanging on.'

Ridgeway Estates – A memorandum of record regarding the carriage house is on the agenda to be discussed under 'Old Business.'

Walnut Farms – No new information; allocation is still secured.

128 Walnut Street – This project is supposed to start this coming fiscal year.

Also, 20 units are scheduled to begin this coming fiscal year – Ridgeway (16), 128 Walnut Street (3), and Todd Elliott's Subdivision (1).

Municipal Capital Projects

WWTP Upgrade – Hopefully the loan will be secured by June 30th. The town's budget is also expected to be adopted on June 30th.

Water Storage Tank – Nothing new to report.

Rails to Trails – This project will hopefully be out to bid within the next 30-60 days.

Public Safety Building – The information from RVFD was received last week. A packet will be put together for contractors to be able to provide approximate costs. Also, a feasibility study still needs to be done – this is included in the upcoming fiscal year's budget.

EDC Projects

Eddie's Restaurant is now open; the business opened Monday, June 23rd. The Subway Shopping Center will not include Colosseum Restaurant.

Old Business

Ordinance #311 – After brief discussion, Martin made a motion to recommend forwarding the Ordinance to the Commissioners for consideration, seconded by Margaret, unanimously approved.

Ridgeway/Carriage House – Toby commented on the Memorandum for the Record, stating that there currently is no recipient for the stable (carriage house) – the Ridgely Parks and Recreation Committee doesn't want it, neither does the Little League. Robin Eaton had received an estimate with an approximate cost of \$60,000 to move the building, which JOK Walsh provided an estimate of \$10,000. The developer has committed \$8,000 (in park impact fees, which can be used) towards the moving cost. Toby said that there is no formal request for demolition, but cost documentation is needed when demolition is in question.

Toby said he was just thinking out loud, but suggested that maybe the carriage house could be moved to the Railroad Park as part of the Rails to Trails project, and asked if that would be too crowded at the Railroad Park. Toby said he saw that the caboose had been moved. Missy stated that the telephone building would be relocated within the next couple days. Missy also said that it was her understanding that the \$60,000 estimate was so high because electric lines had to be moved; perhaps JOK Walsh's estimate was to move the building, but not anything else involved in the entire move process. Nancy said she thought that Robin was going to re-measure the wires in question to see if they were still a concern, but she doesn't know if there was any new info on those wires. Joanne said that when she spoke with JOK Walsh, he informed her that his estimate did not take into account the lines, and that there was an apparent problem with the lines, which would increase the cost. Missy said she thought someone from Haynes Holt had looked at the carriage house. Nancy suggested asking Haynes Holt again when he moves the old telephone building. Joanne said that someone other than Haynes Holt was moving the telephone building. Toby suggested getting some documentation regarding the estimated cost to move the carriage house. Toby also stated that time is running out, July 31st is the deadline. There was some discussion concerning the proposed location of the carriage house at the Cow Barn Athletic Park.

Comprehensive Plan Workshop – It was decided, due to the anticipated light agenda, to work on the Comprehensive Plan at the next regular Planning meeting, versus a special workshop. Due to

various scheduling issues, the next Planning meeting was tentatively scheduled for July 16th, with July 30th as an alternate date.

Cow Barn Subdivision – Toby stated that the project had reached a point that it needed MDE approval, and that the default/standard zoning is 20,000 sq. ft. A change was made for certain reasons, including the preservation of the Cow Barn, but the creation a floating zone which allows town houses was part of a package, as referenced in previous minutes. Mr. Carroll asked if there was anything indicating his presence where he stated he agreed to this at all. Toby referenced the plans submitted to the Planning Commission; Mr. Carroll stated those plans were not submitted by him, and he mentioned Tommy Vendemia. Missy stated that most of the plans were from DMS & Associates. Toby said there was no variance on any of the plans regarding the Cow Barn and 2+/- acres, the only variance was when the Planning Commission discussed how to best accommodate parking, town house design to fit in with Ridgely Park, etc. Toby said that plan after plan, the arrangement about the Cow Barn and the surrounding land remained the same, yet in a recent letter Mr. Carroll stated he never agreed to that arrangement. Mr. Carroll again asked if there was anything stating he agreed to that arrangement. Toby referenced the plans received from DMS, saying they represented Mr. Carroll and referenced Mr. Vendemia. Mr. Carroll state that he and Tommy Vendemia had a contract where Mr. Vendemia was going to buy the property, so this is what he (Vendemia) submitted that he wanted to do, if the contract had gone through. Mr. Carroll stated that the contract would have gone through, had there not been so many problems pertaining to a sewer line. Also, in any discussion that Mr. Carroll had with Joe and Robin regarding water/sewer lines to that property, it was always totally going to be Mr. Carroll's cost. Mr. Carroll said by the same token, he would grit his teeth, and say the town wants him to gift them this property, but nothing was volunteered. He said as a matter of fact, he couldn't even get any help expediting things to keep a solid contract with Mr. Vendemia.

Toby said that it is very unlikely that the Planning Commission would have approved this town house project, were it not for these unique circumstances. Toby stated that it is very clear to him that there was an agreement, and that it is in the official documentation; Mr. Carroll again stated that there is nothing to show that he ever agreed to it. Missy stated that she doesn't transcribe the meetings, but keeps minutes, or a summary of the meetings and what was presented at said meetings. Missy referenced an excerpt from the January 2006 minutes in which E.P. Cronshaw and Kevin Shearon mentioned gifting the Cow Barn and 2+/- acres surrounding the building to the town. Mr. Carroll stated that was E.P. Cronshaw making that statement, not him. Mr. Carroll further stated that nobody ever, at any of the meetings he attended, which were very few, asked him just what he is willing to do. Mr. Carroll also said that nobody ever suggested entering into a contract; stating that property is not gifted, sold, or bought without some kind of contract.

Martin said he feels that perhaps this discussion started on the wrong foot, because they are the Planning Commission, not the "deal-makers." He said that on one hand Mr. Carroll says he didn't have a contract that said you would gift the property, and on the other hand there wasn't a contract that said the sewer line was going to be extended. Neither of those issues are things which involve the Planning Commission. Mart said he does recall that at the first meeting, there was a proposal to convert the Cow Barn into apartments, and the Planning Commission stated they absolutely would not approve anything like that, and at that point the discussion turned towards other options. Martin said there would be some sort of open space provision for this type of density (town houses). Martin state that the Planning Commission proposed a zoning overlay to cover that area, but not to the Cow Barn itself. Martin said now the situation is that Mr. Carroll is in a bind, and the Planning Commission is limited on what can or can't be done. They can recommend repealing the ordinance,

recommend putting a different zoning overlay on the property, but they can't get utilities to the building – and that's not even in the town's hands currently. Martin said he was just stating that there are certain limitations that everybody is working with here. The Planning Commission tried to work within limitations, and the basic concern was protecting the Cow Barn with an historic district overlay, regardless of the owner. Martin stated that there is no assurance that if Mr. Carroll were to sell the property that the next owner will be as concerned as he, and that the Planning Commission is limited in how to deal with that. Martin said that there was a subdivision that was approved, and regardless of whether Mr. Carroll agrees to what was on here, the documents that were approved included the wording "dedicated to the town" regarding the 2.3 acres. Martin said the Planning Commission is limited to approve what documents are put before of them, and are not necessarily part of the conversations held between the owner, the developer and the contractor.

Mr. Carroll asked if the 36 town homes were approved based only on the basis that the town was going to be gifted the barn and the two acres. If so, that is a poor way to do business. Toby stated that the property is in a special planning district, and there are unique circumstances that allow for that. Mr. Carroll said the Planning Commission made it a special planning district only on the basis that the town would be gifted the Cow Barn and the 2 acres. Toby said that one of the reasons for the planning district were the preservation of the Cow Barn; Mr. Carroll said that is what he is trying to do now. Mr. Carroll said that after the last meeting, he contacted JOK Walsh, who referred him to a gentleman in Chestertown who sent him copies of covenants. Mr. Carroll said that he believes the Planning Commission probably wouldn't agree, nor would he, to the kind of covenants that may be needed. The part he wouldn't agree to is that the main covenant states the powers that he would have the right to come in to inspect the property, and if it's not being properly maintained, or if changes are desired to be made, these certain steps have to be followed. However, even if repairs aren't made they would have the power to have the repairs done and bill the owner for said repairs. Mr. Carroll doesn't think that any member of the Planning Commission, as an individual, would agree to that. Mr. Carroll asked what his choices are. Toby referenced an ordinance which would allow the subdivision of the property to the current zoning, which would be 20,000 sq. ft. lots. Toby also stated that there is a preservation ordinance, which would prohibit the demolition of the building. There was some brief discussion concerning demolition of buildings.

Toby stated that this is one unique planning area, and to get a certain density there would be an open space requirement, in order for an overlay to be approved; otherwise, it's back to 20,000 sq. ft. and ordinances regarding preservation. There's been a big change because this was working as one complete plan. The MDE and housing economy situations are out of the Planning Commission's hands. Mr. Carroll said the Planning Commission keeps referring him to certain ordinances, referencing lot size. He referenced Lister Estates, stating that he was going to buy that property but it was not feasible for him based on the size of lots at that time. Then the ordinance was changed to allow smaller lots. Toby said those lots meet the Smart Growth criteria, which helps with funding options. Mr. Carroll asked if it is the decision of the Planning Commission for the 20,000 sq. ft. lot size to remain on the Cow Barn Property.

Toby asked what would be the fate of the Cow Barn. Mr. Carroll said it would have to be built around. Mr. Carroll said what needs to be understood is that this is a piece of property that he can not afford to hold on to, and he is not willing to keep pumping money into, but if it is split, the town would receive approximately \$400,000 in impact fees. Archie Carroll said if the subdivision is approved, the town would receive that money, and he would retain the Cow Barn. He wouldn't be able to use it for apartments or whatever, without the town's approval. Mr. Carroll said if the property can't be subdivided as proposed, his only choice is to sell the entire property to someone

else, and it's hard to tell what that buyer would want to do with the Cow Barn. Toby reiterated that the town can't subdivide the property because the county will not sign off on the subdivision. Missy stated that at the time the town went to MDE to request approval for 27 units of allocation, if the Cow Barn project had still been "on the table," it would have been included in the allocation request, and therefore received subdivision approval. Until Phase I of the WWTP upgrade has been completed, the town is unable to grant any additional allocations. Even if there was some sort of an agreement or resolution made concerning this property, the town can't approve the subdivision, because MDE won't allow the county to approve the subdivision.

Toby asked how water services will be provided to the Cow Barn property if Ridgely Park doesn't happen. Mr. Carroll said the water was not very expensive to get there, but the hold up was the sewer line – even if the system could handle it, Mr. Carroll had been told the sewer line could be run down Cow Barn Road to Bell Street, then MDE became involved. Mr. Carroll said that even if Ridgely park doesn't happen, a large enough line to handle the project could be installed.

Toby mentioned lot sizes, stating that Mr. Carroll asked about smaller lot sizes, and asked Mr. Carroll how he defines small. Mr. Carroll said same size as Ridgely Park, 7,500 sq ft. Toby asked about a developer, Mr. Carroll said he lost the developer because of all these tie-ups. Toby asked Mr. Carroll what he had in mind for the 2.3 acres, and referred to the open space requirements. There was discussion concerning Ridgely Park – being a TND, the overlay zone, lot sizes, and open space. Mr. Carroll said he doesn't have any definite plans as far as lots. He said if this (subdivision) doesn't work – he'll have to sell the property. Toby mentioned the possibility of single family homes on smaller lots. Mr. Carroll asked if Toby was saying smaller lots could possibly be approved on the basis that he would gift the Cow Barn and 2+/- acres to the town. Toby again referenced the open space requirement. Mr. Carroll said it's not feasible in today's market for anybody to do something like that.

Martin said we've been talking about developing and holding. If Mr. Carroll has some notion what kind of notion what kind of development might happen in the area of the Cow Barn, the Planning Commission would have something with which to work. Martin said if Mr. Carroll had something to bring to the Planning Commission, they would have something on which to decide. There was discussion again regarding covenants, a historic trust, and bringing plans to the Planning Commission for approval. Toby asked if Archie had approached Ridgely Park, apparently at one point they were interested in developing across Cow Barn Road. Mr. Carroll said he spoke with them about two years ago, and they had no interest at that time. Mr. Carroll stated that town houses are more appealing than single family houses, as far as the developers with which he's been involved. There was discussion concerning town houses. Jeff said he feels the town houses are a good project and would like to see it happen. Martin said he agrees, but until the WWTP upgrade is done he's not sure what can be done; Martin asked Mr. Carroll what the Planning Commission could work on to help him out. Mr. Carroll said he is looking for some sort of understanding, something in the minutes, that states that subject to the sewer plant able to handle, that the Planning Commission agrees to subdivide the property, Mr. Carroll continues to own the barn and 2 +/- acres, and hopefully sometime in the future the town could get a grant or somehow buy the barn. He said he can't afford to give it away. Martin asked what the real estate version of that agreement would be; asking if that would be considered a first right of refusal. Mr. Carroll asked what he meant; Martin offered an explanation. Mr. Carroll said that he thinks the first right of refusal would be a good idea. He further stated that he hopes the town ends up owning the Cow Barn, but hopes the Planning Commission understands that he is not trying to pull anything over on anybody. The interested developer won't currently pay what he was previously going to pay for the property due to the

market. There was discussion about needing a contract and the approval of the subdivision. Toby asked why a project of that density would be approved. Mr. Carroll said for the need.

Toby said he's not sure what to do since there is no plan being presented. Archie suggested discussing the possibility of allowing the subdivision with the town having first right of refusal in a certain amount of time. After that, he's not sure what else to recommend. Toby asked what would be developed on that property. Martin mentioned covenants for the property. Nancy stated that generally when a development project is being proposed in town, it is the developer with whom the Planning Commission has the most interaction. Nancy mentioned Mr. Carroll trying to sell the Cow Barn. Mr. Carroll said he was not going to try to sell the Cow Barn; stating that he can afford to keep the Cow Barn if he is able to sell the other part of the property. He just can not afford to own the entire property with nothing happening. Margaret Haven left at this time.

There was discussion concerning what could be included in the covenants, and it was recommended to confer with Jack Hall (town attorney). Missy stated that to her it seems there are separate issues, which seem to have been mixed together. The first matter is the subdivision issue; the town can not approve the subdivision due to the MDE situation. The second matter is that there currently isn't anything presented to the Planning Commission for them to approve. There was further discussion about the MDE situation, certain contingencies, and Mr. Carroll's need to have something for a developer and for the Planning Commission. Toby said that the Planning Commission would need to consult with Jack Hall before anything else could be done with the property. Martin recommended having Jack Hall and Shane Johnston at the next meeting. Missy asked Mr. Carroll if the information he brought with him tonight included the letters of June, July and August 2006. Those letters include the legislation regarding the overlay zone, which he would most likely need to give to a possible developer. He said that he remembered that information. There was some discussion about the next meeting date, and the possibility of sample covenants for the next meeting. Mr. Carroll thanked the Planning Commission for their time, and left.

Public Comments

Nancy asked that a list be made including the suggestions and be included in the proposed covenants.

Martin asked about the property owned by Melvin Holmes. There was some discussion concerning Ridgeway Estates.

Adjournment

At 8:24 a motion to adjourn was made by Martin, seconded by Mickey.

Respectfully Submitted,

Missy Vanskiver

Asst. Clerk