



**LOUDON COUNTY
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MINUTES

LOUDON REGIONAL PLANNING COMMISSION

December 4, 2013

The December meeting of the Loudon Regional Planning Commission was called to order at 12:30 p.m. Present were Mr. Carey, Mr. McEachern, Ms. Hines, Mr. Gammons, Mr. Cardwell, Ms. Jones, and Ms. Roberts. Absent were Mr. Brennan and Mr. Brewster.

A motion to approve the minutes for the November 6, 2013 meeting was made by Ms. Hines, second was by Mr. Gammons. Minutes were approved 7-0.

Agenda Item A: Consideration of request for site plan approval for the expansion of Malibu Boats, LLC to construct a 20,000 sq. ft. warehouse, 4,500 sq. ft. Mold Storage Building, and a 300' x 150' boat storage yard, referenced on Tax Map 33, Parcel 5.03, consisting of 16.77 acres, located at Natalie Blvd. and Henry Drive in Sugar Limb Industrial Park. Owner/Applicant: Malibu Boats, LLC.

Mr. Newman explained the location of the site. He stated that the Del Conca plant was located behind this property. He said that the protected site for the old Civil War fort would not be affected by the proposed project. He stated that Malibu Boats was actually located down Natalie Blvd. from this site. He said they didn't have enough property for any expansion. He stated that they had items stored all over the property. He said this site would be used for storage of finished boats and storage of materials related to the business. He stated that there would not be mold making or manufacturing on this site. He explained the location and purpose of each of the proposed structures. He said that the proposed access would be coming off Natalie Blvd. He stated that the site was 17 acres, but the actual developed portion would be about 4 acres. He said that the site had some topographic issues, and there would be significant amount of grade work that would need to be done. He stated that the site drains toward the northern end of the site. He said that currently there was a natural depression on the site to be used as the detention basin during construction and after construction. He stated that they will attach a detention device to the tile that will go under the road. He said this was a permitted use in the M-2 zoning, and they were meeting all the setback requirements. He stated due to this being an industry, there were no landscaping requirements.

Mr. Newman said that the submittals all meet the site plan requirements in the zoning ordinance. He stated that he has not received their copy of the Notice of Coverage which a construction permit issued by the State of Tennessee. He said they we keep this on file with the site plan. He stated that the office will also need to issue a Land Disturbance Permit. He

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stated that subject to submitting these two items, he would recommend approval for the site plan.

Mr. McEachern made the motion to approve the request contingent on submitting the required items that Mr. Newman mentioned, second was made by Ms. Roberts. Motion carried 7-0.

Agenda Item B: Review City Council proposed amendment to the City of Loudon Zoning Ordinance, passed on first reading November 18, 2013, to include crematories as a permitted use in the M-2 (Heavy Industrial District). City Council

Mr. Newman referred to the copy of the Ordinance Amendment that was included in the agenda packet. He stated that the Amendment was passed on the first reading by City Council. He said he had received this from the City Manager's Office. He stated that they are requesting the Planning Commission review the proposed Amendment. He said that the proposed amendment was to modify the permitted uses in the M-2 zoning district to allow crematories as a permitted use. He stated that this district would be the only district that crematories would be a permitted use. He said that this proposed amendment would not allow crematories in any other zoning district unless some other amendment was made to the zoning ordinance. He stated that the amendment proposed to also amend the definition section of the zoning ordinance to define what a crematory is. He said that this definition was similar to the one that the Planning Commission was discussing. He stated that the definition was taken from the State TCA statute dealing with funeral establishments which is commonly used as the definition. He said that there will be a second reading and public hearing on this amendment before it is adopted by City Council. He said the second reading would be the following Monday night.

Mr. McEachern asked if a crematory could be separated from a funeral from the State standpoint.

Mr. Newman said that there was probably some legal interpretation that could be questioned that could be done. He stated that apparently this was what City Council had intended doing by making the proposed amendment.

Mr. McEachern stated that from reading the Mt. Juliet court case, it couldn't be done.

Ms. Hines asked if the City Attorney had looked at the amendment.

Mr. Newman said he didn't know if the City Attorney had looked at the amendment.

Mr. Jimmy Parks, City Councilman, stated that Mike Cartwright was the councilman who had been working on the amendment.

Mr. McEachern said that if the Commission was OK with this amendment, he was for it.

Mr. Newman stated that City Council could move ahead with this amendment, but there were other issues and definitions that needed to be addressed also. He said that this was where they could have problems by not addressing these other issues. He stated that after reviewing

the Mt. Juliet court case, there was a legal challenge. He said that funeral homes are not being addressed at all, and they need to be addressed as well as crematories.

Mr. Cardwell asked Mr. Parks if the 3 current funeral homes would be grandfathered in to have crematories.

Mr. Parks said that from what Mr. Branam, former Code Enforcer, had said, that the current funeral homes could have crematories now.

Mr. Cardwell stated that the amendment was vague in wording on some of the protections from what the Commission had been working on.

Mr. Newman said they had also talked about the separation between a crematory site from schools and playgrounds. He stated that allowing a crematory in any zoning district would potentially have some of those issues.

Mr. Cardwell stated that the Commission still needed to work on the additional setback requirements and emission requirements if the proposed crematory site in a M-2 zoning did come up against residential property.

Mr. Parks said that City Council's intent was to go ahead and put something in place until the Planning Commission could come up with the guidelines and requirements.

Mr. Newman stated that the Planning Commission should continue to pursue those guidelines and requirements. He said that City Council was giving the Planning Commission an opportunity to make a recommendation or not to recommend before the final vote.

Mr. Newman said he was not opposed to the proposed amendment by City Council, but the other issues that the Planning Commission had been discussing needed to be addressed. He stated that the definitions and identifications where funeral homes would be permitted also needed to be addressed. He said that funeral establishments, funeral homes, and crematoriums as a use needed to be allowed in some zoning district.

Mr. Cardwell stated that the City could not exempt but could restrict an activity.

Mr. McEachern made the motion to make the recommendation to approve the ordinance, second was made by Ms. Jones. Motion carried 5-2 with Mr. Cardwell and Ms. Roberts voting no.

Agenda Item C: Discuss status of roadway improvements on Highway 11/Mulberry Street at the entrance to Ft. Loudoun Middle School. Staff

Mr. Newman stated that he had met with Mr. Jason Vance, Director of Schools, to see what the status was. He said that nothing had changed in the standpoint of School Board or the administration in completing the roadway improvements in front of Fort Loudoun Middle School. He stated that the problem is that AT & T had not relocated the fiber optic lines that

are underground on that side of the road. He said that the School Board had requested this relocation a while back. He stated that until AT & T relocated these lines, the roadway improvements could not be done.

Mr. Cardwell asked how the Commission could litigate the safety issues.

Mr. Newman said that he did not know that there was a safety problem.

Mr. McEachern stated that he had not noticed any safety problem.

Mr. Newman said that a lot of the Middle School traffic uses the entrance on Steekee Street. He stated that all the roadway improvements on Steekee Street had been completed. He said that this roadway improvement was based on a long-term impact when there is other growth in this area. He stated that when population increases for that facility, the need for this roadway improvement would be much greater.

Mr. Cardwell stated that the improvements were still a requirement.

Mr. Newman agreed with Mr. Cardwell that it was still a requirement. He said that the School Board acknowledged that.

Mr. Cardwell asked again how the Commission could litigate it in the meantime. He suggested until the improvements were completed, they could make that an exit only.

Mr. Newman said that Mr. Vance said he would meet with the construction manager to see if he could get a better timeline for the roadway improvements to be completed. He stated that when he heard something, he would let the Commission know. He said that if the Commission did find out that the improvements were not going to be done in a reasonable time frame; the Commission did need to look at other options. He stated that if the School Board intentionally delayed the improvements, they would not have done the other entrance on Steekee Street with the turning lane.

Ms. Jones stated that they have had plenty of time to have the roadway improvements done.

Mr. Cardwell said that it did not matter if it was done intentionally or not, it still did not meet the standards. He stated that when the School Board came in for their site plan approval, this requirement was one of the improvements that the Commission demanded to be done.

Ms. Roberts asked what would be considered a reasonable amount of time to wait.

Mr. Newman stated that he did not know. He said that the project is completed, they have occupied the building. He stated that the responsibility of the School Board would be to put more pressure on AT & T.

Mr. McEachern said that this was a State highway, and he did not know how much the City could do.

Mr. Carey suggested that the City write a letter to the School Board stating that the roadway improvements that are required have not been done.

Mr. Gray, Loudon City Code Enforcer, stated that he had a meeting with the School Board on Friday morning in regard to them getting their Certificate of Occupancy. He said that he felt like they were going to do the improvements. He stated that the obstacle was the utility relocating the underground fiber optics.

Mr. Jimmy Parks suggested writing a letter to Mr. Jimmy Matlock and Randy McNally to ask them to write a letter to AT & T.

Ms. Pat Hunter said that the School Board would be having their workshop on Thursday night. She stated that they will be discussing the School Board building program. She said that if something needs to be done, it needed to be done now. She stated that the School Board was talking about getting funding for the Phase II building project. She said that County Commission had told the School Board that they did not want to start Phase II without Phase I being completed. She stated that County Commission was under the impression that the construction at Fort Loudoun Middle was complete.

Mr. Newman stated that the City did have a police officer on site in the mornings. He said the police officer was mainly there to watch for speeding. He stated that if there was a traffic problem, the policeman would be able to address it.

Mr. Cardwell also stated that the Planning Commission asked the School Board to extend the school zone from the high school on down to the middle school with flashing lights. He said doing this would not have any involvement with AT & T.

Mr. Newman stated that this is usually done during the repaving after the widening of the road.

Mr. Cardwell made the motion for the Planning Commission to write a letter to the School Board about signals and the turn lane, second was made by Mr. Gammons. Motion carried 7-0.

Agenda Item D: Review and discuss Tennessee Court Case BMC Enterprise, Inc. v. City of Mt. Juliet regarding impact on adoption of standards for operation of crematories in the City of Loudon. Staff

Mr. Newman summarized the court case BMC Enterprise, Inc. v. City of Mt. Juliet. He stated that this case will ultimately have some bearing on what the Planning Commission would be recommending as a proposed amendment to the Zoning Ordinance to the City Council. He suggested that City Council and the City attorney read this case prior to any amendments to the Zoning Ordinance. He said that this is an opinion from the Tennessee Court of Appeals. He stated that the BMC Enterprise, Inc. was a funeral home operation, which had an existing funeral home in the city of Mt. Juliet since 1997. He said that the existing funeral home was in an office zoning district. He stated that in 1998, the city amended the zoning ordinance to change the zoning on the funeral home property to OPS zoning district. He said that the O

(office) zoning district had allowed funeral homes, but the OPS zoning district did not allow funeral homes. He stated that changing the zoning district made the funeral home at the current location a legal non-conforming use. He said that gave that use vested rights that are very well protected by State statute. He said the State statute says that any legal non-conforming use to expand their business operation on that existing property. He stated that does not apply to the situations in the City of Loudon. He said that a lot of the decisions of the case centered on the fact that it was a non-conforming use that was created by the city when the city changed the zoning district. He stated there were other facts that had some weight in the decision that the court made. He said that the zoning officer in that community as a policy used the standard industrial classification code as the basis for classifying uses that would determine what zoning district they were permitted in. He stated that because they had always done that, when that individual referred to the standard industrial classification; crematories were classified in the same category as funeral homes. He said that the recommendation that the individual wrote to the Board of Zoning Appeals when BMC Enterprise, Inc. applied for approval to have a crematory indicated that. He stated that because of that, it had bearing on the way the court ended up ruling in this case. He said that the other thing that the city did when they amended the ordinance in 1998 to change the zoning of the BMC Enterprise, Inc. property, they also made crematories a permitted use in a new zoning classification called the IS (industrial) zoning district. He stated that doing this, there was no property in the city that was zoned in the IS zoning district. He said when BMC Enterprise, Inc. was applying for their Board of Zoning Appeals to get an approval to put a crematory in their existing funeral home operation, there still wasn't any property zoned in the IS zoning district. He stated that the trial court that Mt. Juliet was in overturned the decision of the Board of Zoning Appeals which had denied the permit. He said that the City appealed to the court of appeals (which is this opinion). He stated that this court of appeals upheld the determination of the lower court which stated that this was incorrect and this business had the right to add the crematory use. He said they said that this was a part of the funeral business based on the city's own use of the standard industrial classification which categorizes in the same business group. He stated that the fact of it being a non-conforming use the city had already created, the state law protects non-conforming uses to allow them to expand.

Mr. Newman said that he thought that if it was not a non-conforming use situation, the opinion could have possibly gone differently.

Mr. Cardwell asked how this could apply to Loudon.

Mr. Newman stated that if the City wanted to protect them from getting in this same situation, the importance of identifying what zones funeral homes are permitted in, adopting a definition and incorporating that in the zoning ordinance that defines what a funeral establishment is, and specifically not including a crematory as a use.

Mr. Cardwell asked if they could do that or had the State already defined what a funeral establishment is.

Mr. Newman said that they could do that as long as there is not a conflict between their definition and the State's definition. He stated that the State's definition did not have a use of the term crematory in a funeral establishment. He said that the court had interpreted, in this

case, that it is part of the same. He stated he thought it had a lot to do with them using the standard industrial classification. He said that the opinion references that as part of the rational of making their decision.

Mr. Cardwell asked how the 3 existing funeral homes in Loudon were classified.

Mr. Newman stated that they were existing uses that are non-conforming, because they were permitted at some point. He said they were an operating business right now. He stated that if the ordinance was to be changed, they would be legal non-conforming uses. He said that gives them protected rights they don't have right now.

Mr. Cardwell asked if they were presently conforming.

Mr. Newman said they were conforming, because they were permitted at some point. He stated that there was nothing in the ordinance that prohibited them and were permitted by the City.

Mr. McEachern asked if it had to be done by Special Exception.

Mr. Newman stated that was permission. He said that did not make them non-conforming. He stated that there was nothing in the C-1 zoning district that makes them non-conforming at the present. He said they were not prohibited.

Ms. Hines and Mr. Carey said that there was nothing in the ordinance about funeral homes.

Mr. Cardwell stated that the C-1 zoning district allows personal services. He said that funeral establishments, according to the federal guidelines under SIC Code, classifies them as a personal service and not a professional service. He stated that the current code would permit funeral establishments in C-1 and C-2 zoning district.

Mr. Newman said that would be only if the City opted to use the standard industrial classification, which they would never use.

Mr. Cardwell stated that the term funeral establishment is not in the ordinance anywhere. He said the fall back would be to specifically allow it or outlaw it. He stated they could come back and say that personal services were allowed, personal services was not defined in the definitions; therefore, they would have to fall back on the next definition they could find which is the SIC Codes. He said the City could add the restrictions to the ordinance for crematories. He stated that way the City was not outlawing them; they would be restricting the operation within it. He said that if it is not defined, it goes to the unwritten.

Additional Public Comment:

Announcements and/or Comments from the Board/Commission: Reschedule January Meeting to Wednesday, January 8, 2014 at 12:30 due to conflict with New Year's Day

Mr. Cardwell made the motion to reschedule January's meeting date to Wednesday, January 8, 2014, second was made by Ms. Hines. Motion carried 6-0 (Ms. Roberts had to leave.).

Mr. Cardwell made the motion to adjourn. Meeting was adjourned at approximately 1:45 p.m.

Samill R. Carey
Signed

JAN. 8, 2014
Date