

**PLANNING COMMISSION  
CITY OF MARTINSBURG  
232 N. QUEEN STREET  
Regular Meeting Minutes  
October 2, 2013  
J. Oakley Seibert Council Chambers  
6:00 p.m.**

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With a quorum present, President Jim Rodgers called the regular meeting of the Martinsburg Planning Commission to order at 6:00p.m. The following Commissioners were present: Jim Rodgers, Mark Palmer, George Reichard, Mary Hayward, Charlene Elins, Reenie Raines, Jeff Molenda and ex-officio member Councilman Gregg Wachtel. Not present was Commissioner Yvonne Jenkins. Also in attendance were Legal Counsel Kin Sayre, City Engineer/Planning Director Mike Covell, and City Planner Tracy Smith.

**ROLL CALL (and microphone check)**

**APPROVAL OF September 4, 2013, MEETING MINUTES**

Commissioner Palmer asked that a minor addition be made to the Ambrose Park discussion, noting that he would specifically like it recorded for the record that the Commissioners agreed that the City Engineer be allowed discretion to approve minor changes to facilitate park improvements at staff level. Commissioner Hayward noted her name is misspelled on page two. The September minutes will be returned for approval at the next meeting.

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

1. **CASE #TA 13-049.** Application requesting public comments towards the acceptance of text amendments to the Stormwater Management Requirements of the City of Martinsburg Zoning Ordinance. Martinsburg Planning Commission, applicant.

Erik Genga with Delta Development provided an approximately twenty-five minute PowerPoint presentation with an overview of this project from beginning to today; the process and the content, (copy can be found in the CASE file).

Chairman Rodgers opened the Public Hearing at 6:28pm. No one came forward to speak for or against this request; however two people came forward to express their concerns:

- David Hartley with the Eastern Panhandle Home Builder's Association asked that the Commissioners and the consultant pay attention to the feedback given by the engineers involved in the Stakeholders meetings. He asked that the ordinance have flexibility in options between new construction projects and re-development. He asked that

affordability also be taken into account; that we want to do everything to protect the environment but we should also be concerned about costs as ultimately it will be the home or business owner paying these increased costs and we want to keep Martinsburg as a place people can afford to live and work in.

- Brian Tolstick, Commander of the Martinsburg American Legion asked that consideration be made for Site Plan applications that have been submitted prior to the adoption of this ordinance. He is particularly concerned about the current American Legion Site Plan for a new structure and gave an overview of those plans including the previously approved stormwater management.

As no one else came forward to speak for or against this request, the public hearing was closed at 6:34pm.

Councilman Wachtel mentioned the Federal mandate that requires these updates noting that we do not have a choice in upgrading this Ordinance.

Chairperson Rodgers asked for clarification on the subject of prior and existing applications pending building permits and if they will be "grandfathered" in. City Engineer/Planning Director Mike Covell responded that this question came up during the Stakeholder's meeting, that anyone who has submitted prior to the adoption, by Council, of these regulations will be allowed to continue their review and approval process under the Ordinance that was in place at the time they submitted. Mr. Covell also noted that, to his knowledge, the American Legion is not an actively submitted project, so if they submit in the next few weeks they can be reviewed subject to current review requirements; if they don't submit in time they are an officially dead project that got reviewed over three years ago and will need to go back through their processes – a two-step approval with the Board of Zoning Appeals first to allow it and then to come back in front of the Planning Commission with a site plan. He noted that if they can get the Site Plan submitted before the passage of the replacement regulations then they are entitled to be reviewed under the old regulations.

Chairperson Rodgers then asked to address Mr. Hartley's comments as far as the input provided by the engineers and if those suggestions have been included in this draft. Mr. Covell responded that feedback was mostly open-ended questions to ask for clarification on what a certain section or certain language meant. He noted some comments were questions on infrastructure for capacity of our storm sewer underground pipe, the meats and bones of the City's drainage system, someone who redevelops the way the draft used to read would have to anticipate modeling to have infrastructure to handle a twenty-five year storm through drains and pipes, and we have lowered that to ten (10) years to reflect more accurately what the city traditionally has in the older downtown. Another question pertained to the appropriateness of downstream impact modeling and, upon review, we found we have similar, if not identical, language that is already in place with Berkeley County so therefore our response was to note that [the proposed Ordinance] is totally in-line with what our County is using so we are going to stay on-point with requiring stream analysis. He noted other minor details that were processed directly with Delta Development in the way of editing or expanding of definitions. Mr. Covell

specified that many of the comments had nothing to do with the core of controlling the one-inch of rain, how to do a plan that requires quantity control/quality control – a lot of that was not an issue.

Councilman Wachtel asked if the work at Kentucky and King/Valley and King [Streets] is an example of this. Mr. Covell explained that those are examples of the city fulfilling some of its goals; that the MS4 is a program in and of itself that the City looks to do a housekeeping review of its current system and how to maintain and manage our operations and then how to get City activities or development to meet what State and Federal Regulations are. As a City we have looked at some infrastructure upgrades, through some preliminary engineering, that we hope will become projects in the near future but it is with the hope that we can get double benefit. While we try to replace some old worn out infrastructure we can solve some problems but we can also do things with some of these new words such as LID and BMP, to try to get some “green” elements added into these projects so that we can show the State that not only are we trying to meet our goals but that we’re also trying to reduce what makes it into our storm sewers by doing some basic best management practices.

In response to Councilman Wachtel’s comment about the financial cost of the required upgrades and grants, Mr. Covell agreed we [the City] definitely try to leverage what we can so that it is a sensible project in a needed area and leveraging whatever funds we can so it’s not a 100% Martinsburg expense.

Chairperson Rodgers stated that one of the applicability standards is 5,000 square-feet of disturbed area, noting that in his opinion this number seems low and very restrictive. He asked if there is any flexibility to adjust that upwards to make the area larger. Mr. Covell, replied that the current stormwater regulations are for when you disturb 3,000 square-feet and to move it up to 5,000 square-feet is an actual carry-over from the Region 9 model ordinance; it’s actually a threshold that should work quite well but we have, in some of the in-fill or redevelopment areas, some small footprint commercial development that could actually *not* trigger stormwater control and that has to be considered in how much impact we want to regulate, from what point up – from what size and larger do we want to make sure we have stormwater control. As of today, for the past twenty years, we’ve had stormwater reviews for anything that disturbs 3,000 square-feet of ground, today the proposal is 5,000 square-feet of impervious [area], and that means blacktop, rooftop, concrete sidewalks, and that means you could develop more than you can today and not trigger the new regulations. And whether or not that’s found to be in the best interest of the community should be something that the Planning Commission should consider, or to actually bring that number back down to the 3,000 square-feet that we have practiced for the past twenty years.

Chairperson Rodgers clarified that the model says 5,000 and asked if there is any discretion on the part of the plan or the City to modify that to make that more, to make it perhaps 6,000 square-feet. Mr. Covell replied that it’s the Commission’s ultimate recommendation to Council, as Staff he is minimally comfortable with this 5,000 threshold. He went on to state there are some areas with small commercial businesses that, if they develop or redevelop, may be able to

do it without any stormwater review and we have to consider what that will mean in their area. It might mean no impact at all but it might mean we immediately get phone calls from nearby homes asking why we approved this as they're starting to have problems.

Commissioner Palmer asked for confirmation that the City Engineer is comfortable with the 5,000 square-foot area. Mr. Covell replied that the 5,000 was agreed on to be a good basic control point when this was developed with panhandle government communities as well as input from the private side; this came from Region 9 using Delta Development to create a model template, and at that time, we had input from Berkeley County, Martinsburg, Jefferson County, Charles Town, and with that level of input this model ends up saying that the trigger is 5,000 square-feet of creating impervious areas. But that was determined to be good for the model, it might be different for a community, and then they should take it into their consideration what is the beginning of when the Planning Commission would want to make sure development or redevelopment does not impact surrounding neighborhoods.

Commissioner Palmer asked if we implement this and we see there is a problem because of the 5,000 then we'd have to go through the same process with public hearings etc., that but we wouldn't have to re-do the whole thing. Mr. Covell confirmed that this is a "living document" and sections can be added to, removed, clarified, etc., but he also noted that, if we find that threshold doesn't work, the only downfall would be that we couldn't go back retroactively on projects that were approved on that basis.

Commissioner Palmer then asked if the additional cost to the developer would be substantial or minor; what would the impact of development, engineering, total costs, etc., of leaving it at 3,000 compared to changing it to 5,000. Chairperson Rodgers noted this would mean that more small projects would fall beneath the criteria. Mr. Covell responded that if a proposed project would not hit on any of these triggers, if it is not going to create more than 5,000 square-feet of blacktop, rooftop or concrete, then they do not trigger the requirements and would simply have a site plan review with no stormwater management. He went on to clarify that a developer could probably do about a 1,200 or 1,500 square-foot building with parking and be underneath our threshold; that's a 30x40/30x50 building with ten or twelve parking spaces that would not require stormwater management. Commissioner Palmer stated his opinion that this does not appear to be a good idea when we've been going with the 3,000 for the past twenty years. Chairperson Rodgers interjected commenting that the increased costs of application, design, bonds, etc., would be significant. Discussions focused on review costs directly passed through from the stormwater review firm, noting that the Bond is reimbursable once eliminated leaving only the fee as an out-of-pocket expense, the need for a Bond, and the fact that Berkeley County has set precedence by requiring them. Chairperson Rodgers stated his thought was to increase the allowance but if the model suggests 5,000 then he doesn't agree with going lower as he believes it's going to be a burden to anyone who wants to do a small project.

After Mr. Covell and Mr. Genga once again described the difference between 5,000 square-foot disturbed and 5,000 square-foot impervious, stating that the model ordinance is not only more

lenient than our current ordinance, it is also more lenient than the ordinance adopted by Berkeley County, Commissioner Molenda asked if anyone has done a cost comparison of the two. Mr. Covell replied that he is not aware of any but did confirm that a site plan will take more time to be drawn-up, ponds at the low end of the property will occur less often as these regulations are quick to make it more of a priority to scatter stormwater management over multiple areas of the property making maintenance more critical and invasive and, therefore, more expensive.

Commissioner Molenda asked if we know the costs for the City of the long-term follow-up and inspections, etc. Mr. Covell replied that the impacts are unknown at this time; the inspections and subsequent enforcements have been evaluated but it is understood that until this is put into practice, those costs are unknown but will become a growing burden on the City. Further discussions centered around possible costs and further need, staff training, ordinance creation and refinement, implementation and enforcement going forward as the State legislation changes Municipal authority.

Commissioner Palmer asked once again for confirmation that staff is comfortable with the 5,000 square-foot compared to what we've experienced in the past and the problems we've had with different developments; comfortable with that criteria when it sounds like the County is more restrictive and we *were* more restrictive and now we're going to be less restrictive. He also asked for confirmation that the new document will meet compliance with this watershed criteria. Mr. Covell responded that one of the goals is to ensure we're progressing and are compliant with State and Federal requirements, but first and foremost, to acknowledge it's about the people we live with, the community, restaurants and HOA's and finding a good pattern that suits typical development expected in Martinsburg. He went on to say the model is meant to be a basis for the community to pick it up and not have to reinvent the wheel but to tailor it, and the 5,000 square-foot threshold provides a minimal amount of comfort that is workable but raising the amount may allow smaller commercial development to go without any stormwater control that could lend itself to nearby residential and drainage impacts – something that would be caught under the current regulations. Commissioner Palmer then asked if the worst case scenario is that we would have to correct that if we see it becomes a problem. This was confirmed.

Commissioner Palmer then referenced the Page Five references and asked why they were included. Mr. Covell replied that the logic behind inclusion is to allow flexibility with known development standards.

Commissioner Palmer asked if it would be possible to get a summary of the regulations that could be used as a guide for people who are not familiar with the new regulations. Mr. Covell and Mr. Genga stated that would be possible.


Commissioner Raines moved to recommend approval to City Council. Commissioner Reichard Seconded the motion that was followed by a unanimous vote of "aye." Motion carried.

**DISCUSSION ITEMS/OTHER BUSINESS:**

1. Next regular meeting scheduled for November 6, 2013: no one indicated they would be absent.

**ADJOURNMENT**

Motion to adjourn the meeting at 7:10pm and approved by unanimous consent. Motion carried.

  
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Jim Rodgers, President

  
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Tracy Smith, City Planner