

March 16, 2011  
REGULAR MEETING AND PUBLIC HEARING MEETING OF THE  
BENTON COUNTY PLANNING BOARD

**Minutes**

**Call to Order:** Chairman Lane Gurel

**Roll Call:** Lane Gurel, Ken Knight, Jim Cole, John Pate, Heath Ward. Staff was represented by Ronette Bachert and Donna Fallin. Elizabeth Bowen, Administer of General Service was also present.

**Disposition of the Minutes of 3/2/2011 TAC meeting as distributed.**

**Reports of Planning Board members** – Chairman Gurel noted there is a new process for public comment. There will be a brief allotment of time at the beginning of the meeting for citizens who would like to comment on general items not specific to the projects on the agenda. After each project presentation, there will be time allocated for public comment pertaining to that issue.

**General Public Comment – There was no general public comment**

**New Business: No New Business**

**Old Business**

**A. Osage Creek Performing Arts Center**—Project Update by Greg Smith, Osage Creek, 3616 Hayfield Circle Fayetteville 72704 and Tim Sorey, Sand Creek Engineering, 1610 NW 12th Street, Bentonville, AR 72712.

Planning Staff sent an email requesting several items that were missing from the project file. In response, Greg Smith produced the following: 1.) receipt from Large Scale Development, 2.) letter from NACA, a regional waste facility stating they will take all of the Osage Creek waste, 3.) letter from a hauling company stating they will haul the waste, 4.) letter from the sheriff stating that he has had a growing relationship with Greg Smith about the project and 5.) a stamped copy of the survey from the actual site. Other outstanding items presented in a new set of plans included stamped/sealed engineering plans and a signed/sealed survey. The stamped/sealed architectural plan was not available. Tim Sorey stated that because the project was a Design-Build scenario, things like the entry and ramps meeting ADA requirements have changed over time but he was working to get the signed/sealed architectural plan to the board as quickly as possible.

Greg Smith stated that Osage Creek was not selling more than the 5,000 tickets the Board had approved. There was a rumor that they were selling grass seats for their July concert, this is not true.

Chairman Gurel asked if the 1 ¼ miles going west from the venue to the pavement will be three lanes? Greg Smith stated the agreement was for 1,000 feet of paved three-lane. Mr. Smith has agreed to make it three-lanes all the way to the end of his property which is more than 1,000 feet. There is one property owner, Mr. Jim Griffin, between the Osage Creek property and the beginning of the paved roadway. If Mr. Griffin agrees, Osage Creek will pave three-lanes all the way to the existing pavement.

Chairman Gruel restated his concern about dedicated access for emergency vehicles. Cars exiting to the west after an event could use two lanes for 1,000 feet or to the end of Greg Smith's property (the third lane would be dedicated to emergency vehicles), but from that point to the paved road there would be one exit lane until the road splits at Logan Road and Gailey Hollow. Mr. Smith commented that even though the road to the east is not paved, cars could also exit in that direction. The east access could also be dedicated to emergency vehicle access only.

Mr. Smith pointed out that emergency vehicles will be onsite along with a Life Flight helipad. Tim Sorey said the helipad may have to be on the south property and if that is the case, the Board will need to approve the hard surface. Both Highfill and Gallatin Fire Departments have agreed to have a truck on site. Mr. Smith believes Highfill has more equipment and a faster response time but he is willing to pay dues to both to ensure the venue is covered with no risk to others in the community.

Mr. Knight thought the ¼ mile going west with one-lane would be a real traffic problem. Greg Smith met with the Sheriff to discuss this issue. Osage Creek will pay to have traffic control available so that, if needed, they could move exiting cars to one side of the road and still have room for emergency vehicles to pass. Both east and west roads will be paved – but there is no time requirement for the completion of the east road. Mr. Smith hopes to have it done by the first event, but it is not a requirement for the first phase of the plan.

Mr. Pate asked for a list of professionals working on the job. At this time Tim Sorey passed out new plan packets which included: A set of his plans, architectural info, and structural engineering plans from Tatum-Smith in Rogers. The electrical and plumbing teams are being hired through the contractors. Barnette electric is doing the electrical work.

The new set of plans that Tim Sorey presented had the phasing plan that was submitted at the (10/22) T.A.C. meeting but not the final revised copy (11/8) that was approved at the Public Hearing meeting. Tim lost the final document on his computer but will replace the 10/22 phasing plan with the 11/8 document as soon as he can make copies.

Mr. Smith did meet with the Health Department but the submittal has not been made. Tim still needs to do the structural design on the 80,000 gallon holding sewer tank. This is the best option because the facility is not open all the time. The Health Department needs a complete package presentation, water source, sewer, etc. Tim Sorey is working to get this completed so he can present the Board the approved Health Department documents.

The Board was concerned that with the short time before the scheduled opening, and regardless of the stated Design-Built fast track process, they need to see some final construction documents. Chairman Gurel stated that Design-Built is a process that happens at the project office not a moving target for the planning board. Once a developer decides what they want to build, they come to board and present that plan. This does not preclude them from coming back to the board to change it at a later date.

Mr. Sorey inquired about the submission of a Floodplain Development Permit for the portion of the overflow parking area on the south side of the site that is in a floodplain? For Phase I with 5,000 ticket holders and workers there will be no

problem staying out of the flood plain, but for larger events they may need the space. Mr. Sorey stated that mass parking will be on the south side, as approved and paved VIP and preferred parking will be on the north side. They plan to use the paved north side for parking for first event.

Greg Smith stated they had received letters from the Walton Arts Center and a national promoter interested in working with the venue in the future and that the Osage Creek Arts Pavilion will be a first-class facility.

Lane Gurel asked if the most recent project approval supersedes the older temporary approval? The board agreed that the approved temporary site, and the most recent approval site together cannot have more than 5,000 attendees. The two venues may book events simultaneously, but together there can be only 5,000 participants because of the road/traffic issues.

The Sherriff has been involved in discussions about traffic control and lighted signs. Lance King with State police will help with traffic control where Hwy 68 meets 412. Traffic counts at that time of the evening are low but if they need traffic control Mr. Smith will provide it. They plan to hire off-duty police officers.

Chairman Gurel reminded Greg Smith that they must meet the requirements for a mass gathering permit, as a stipulation for approval.

**B. Territorial Jurisdiction** – Jeff Hawkins of NW Arkansas Regional Planning Commission— Mr. Hawkins said there is and has been confusion on city/county planning jurisdiction. When a city has a planning commission, their territorial jurisdiction, by state statute, is 5 miles, or if the cities are less than 10 miles apart, equidistant between the cities, or as otherwise agreed by the cities. City planning commissions define areas within their jurisdiction they will make ordinances and plan for. Cities usually look at the areas they think will be city in a relatively short time.

Cities with planning commissions have jurisdiction to approve subdivision regulations in their planning areas. Cities should not defer decisions on unincorporated areas within their planning area to the county. If a city approves a subdivision in their unincorporated area, they need to give the county Planning Board sixty days to comment/review.

Some cities believe they have authority to review and approve not only the subdivision of property but other development projects that are within their planning area. There is some confusion about whether the city's jurisdiction goes beyond subdivisions. The board asked that Jeff Hawkins frame this question for clarification to the Attorney general for an opinion. Mr. Hawkins agreed to do so.

Mr. Hawkins stated that when a project is in the planning area of a city, in incorporated area – the extent of their authority is to regulate standards unless they have a land use plan. If there is a Land Use Plan they can decide on the use of the land for a particular purpose. A Land Use Plan is a prerequisite to zoning. Cities do not have authority to control land use or enforce city zoning regulations in the unincorporated county, only standards.

Mr. Hawkins said that even though Benton County doesn't have zoning, a Land Use Plan is necessary to resolve some of the ambiguity about authority for the county. It is the basis for rational land use decision making.

**Public Comment:** Judge Clinard—The Judge and Ronette Bachert recently came across an issue when in 2006 a residential subdivision, located in a floodplain in the unincorporated county, was made a part of the city of Bentonville’s planning area. Prior to 2006 the County required a 1 foot free board build up but Bentonville requires a three foot build up. This is very expensive for residents. The Judge asked the Board to consider if the county should make their ordinances the same as the city’s so this won’t happen again?

Warren Phillips: 451 Evening Star Road, Mr. Phillips stated that he thought the Attorney General had already addressed the issue of territorial jurisdiction and that he thought the ruling was that cities do have authority beyond subdivisions.

Jeff Hawkins will research this.

**C. Benton County Land Use and Development Plan** – was presented 2 weeks ago at the T.A.C. meeting. Mr. Gurel asked Jim Gately to give a brief overview/synopsis of the plan.

James Gately, 9360 East Lakeshore Dr. Rogers, AR— The Land Use Plan is the culmination of a long time effort. The concept is to take away the ambiguity as to the authority of Planning Board to make decisions on compatibility. The land use plan ensures the planning board has the authority to make decisions on land use. In addition, the committee felt that if a developer wants to build a development in the county, the procedures to do so should be clear.

The Land Use Plan is a “Vision” for the county. It is only a list of recommendations. The Planning Board and Quorum Court will make decisions/ordinances based on those recommendations. The committee considered all previous committee recommendations. They listed continuing issues and made recommendations. This committee was made up of many stakeholder groups with diverse viewpoints to be sure a good cross section of the county was represented.

Chairman Gurel thanked the committee and stated that his thought was that the opposite of a Land Use Plan is no plan at all. Mr. Ward thanked committee for their hard work and said the plan was well written and balanced. Mr. Knight agreed and asked if we should not include the cities as they deal with their planning areas. Mr. Gately stated that the committee agreed to do the plan for the unincorporated areas only until the issues of city/county jurisdiction are clarified.

Justice Tom Allen, the Planning Board liaison to Quorum Court stated that the next step, should the Planning Board pass the Land Use Plan, would be for Justice Allen to take it to the Quorum Court and Attorney before going to Legislative Committee or Committee of 13.

**Public Comment:** Jim Collier, 19641 Collier Lane, Rogers. Mr. Collier was pleased to see the Land Use Plan. He felt the plan needed to be more specific and it needed some “teeth.” He would like to see the Board get authority to set completion bonds – to avoid another Beaver Shores where a centralized septic sewer system was approved, neglected then abandoned. Mr. Collier feels the Planning Board needs the authority to rule on compatibility.

Warren Phillips--451 Evening Star Road, Cave Springs. Mr. Phillips felt that the Master Plan committee should have been made up of property owners, common citizens. He felt like the committee was made up of special interest groups.

Cheryl Murphy--15147 Lakewood Drive: Ms. Murphy served on the committee and stated that she was an example of an ordinary citizen and member of the community of the county.

Sue Keith Olberson -11297 Blue Jay Road, Pea Ridge: Ms. Olberson wanted to applaud the committee on the Land Use Plan. She thought the committee was well rounded and represented the best interests of the citizens of the county.

Tom Allen--Justice of the Peace: Mr. Allen reminded the Board that the statutes state that before adoption of an official plan, the board shall have one public meeting to allow Quorum Court Justices to attend if they choose to do so. Chairman Gurel said the JPs were emailed the agenda for both the T.A.C. meeting (3/2/11) and the Public Hearing (3/16/11) where the Plan was presented, so this requirement had been met.

**Land Use Plan was unanimously approved:** Mr. Ward made a motion that the board approve these recommendations and refer them to the Quorum Court where they be placed in the appropriate committee for consideration. Mr. Knight seconded and the Land Use Plan was unanimously approved.

**Planning Board Training:** Mr. Gurel stated the Board needed to establish a time for a Planning Board training session because several members have not been to a training session. Training sessions address planning issues, immediate needs of the board and educate board members on current regulations. The committee will come up with dates via email.

**Appreciation for Service:** Board presented Heath Ward with a plaque of appreciation for his four years of service to the county.

**Adjournment:** 8:20