

Taylorsville-Spencer County
Joint Planning and Zoning Commission

The regular meeting of the Taylorsville-Spencer County Joint Planning and Zoning Commission was held March 2, 2023, in the Fiscal Court meeting room located at 28 East Main Street, Taylorsville, Kentucky.

Chairman Deapen called the meeting to order.

Present were Valerie Hunt, Jacob Brown, Paula Wheatley, Marsha Mudd, Gordon Deapen, Anthony Travis, Diana Faue, Teddy Noel and Attorney Dale. Also present was Administrator Julie Sweazy and Admin. Assistant Angie Helton.

Commissioner Faue: On our docket this evening I would like to make a motion that we move old business to after new business.

Commissioner Travis: Second.

Chairman Deapen: Discussion, roll call.

Administrator Sweazy: Roll called, motion carries.

Chairman Deapen: Full disclosure to those of you setting patiently, we have a discussion on a Townhouse zoning that we are going to discuss. As a courtesy to you we decided to move that to the end so you won't have to set through that.

Chairman Deapen: In your packets you have a copy of the minutes from the last meeting for February 16, 2023. I will entertain a motion to approve those minutes.

Commissioner Hunt: Made a motion to approve the minutes for the February 16, 2023, meeting.

Commissioner Wheatley: Second.

Chairman Deapen: Discussion, roll call please.

Administrator Sweazy: Roll called, motion carries.

Chairman Deapen: Any committees?

Administrator Sweazy: None.

Chairman Deapen: We do have a 3-minute limit on speaking and anyone wishing to speak must be sworn in.

Attorney Dale administered the oath of testimony to all wishing to speak.

Chairman Deapen: New business.

Administrator Sweazy: We have the application of **Derik & Rebecca Thompson** requesting AG-1, agricultural to AG-2, agriculture on two separate tracts of land, Tract A consisting of 6.07 acres and Tract B consisting of 6.09 acres located in the 4000 block of Plum Creek Road, Hwy.

1060. The comprehensive plan recommended land use map indicates the area should be low density residential. Mr. Thompson is here but I don't think he was sworn in.

Attorney Dale administered the oath of testimony to Mr. Thompson.

Administrator Sweazy: The applicant is requesting to create two tracts, one for himself and the other for his sister. Some of the property is in the floodplain. But there does appear to be building sites on each tract that would not be in the floodplain. Although if approved and they decided to apply for a building permit we would recommend the application go through the Division of Water to see if any elevation are needed.

Derik Thompson: We don't have an address yet but it's in the 4000 block of Plum Creek Road. The plan is to take the property and divide it up. My sister and her husband are going to build on their side and we'll do something with our section.

Chairman Deapen: Questions from the commission?

Commissioner Faue: What do you propose to do about the floodplain? Are you at least worried about that?

Mr. Thompson: No, it was surveyed before we bought it and it gives us enough room to get to a safe area.

Commissioner Faue: Do you plan on putting crops or anything in that floodplain?

Mr. Thompson: Maybe some homesteading, sheep, or something. No long-term structures or anything.

Chairman Deapen: Any objections to acting on this tonight? I'll entertain a motion. I'm sorry, do we have anyone signed up to speak on this one?

Administrator Sweazy: We do not.

Commissioner Mudd: I make a motion to recommend rezoning the application of Derik & Rebecca Thompson requesting a zone change from AG-1, agricultural to AG-2, agricultural on two separate tracts of land. Tract A consisting of 6.07 acres and Tract B consisting of 6.09 acres located in the 4000 block of Plum Creek Road, Hwy 1060. The recommended land use map in the comprehensive plan recommends low density residential. The change would be in compliance with the comprehensive plan, and no one is here to speak against it.

Commissioner Noel: Second.

Chairman Deapen: Further discussion from the commission? Read roll.

Administrator Sweazy: Roll called, motion carries.

Administrator Sweazy: We have the application of **Paul & Cheryl Whitehead** requesting R-1, residential to AG-1, agricultural on 29.66 acres located at 319 Wills Way. The comprehensive plan recommended land use map indicates the area should be medium density residential. As far as previous action in 2001 there was 165.41 acres zoned R-1. When Top Flight Landing was

platted this acreage was originally a portion of the land that was designated as golf course greens. The applicant came into the office and purchased a building permit for a pole barn with living quarters. At that time we discussed his acreage and the restrictions on the property of no further division. I explained that changing the zoning back to AG-1 would be a good tax benefit for them. They plan to live in the pole barn while they build their forever home.

Paul Whitehead: We're wanting to change the 29 acres from R-1 to AG-1. No crops except might put out some clover and turnips for the deer. Maybe a personal garden. My wife wants to get a couple of European Fluffy Cows. If we do there will be a four-board fence up. My restrictions were very clear when I purchased it. There's only 7-8 restrictions and I'm not in the HOA. That's why I purchased; I would not have if I had an HOA.

Chairman Deapen: Questions from the commission?

Commissioner Wheatley: Getting to your property. Are you going through the cul-de-sac?

Mr. Whitehead: I share a gravel driveway with the sewer treatment facility. I'm breaking ground Saturday and my driveway goes all the way to the end, they fork to the right and I'm going to the left to the very bottom of the pond right before you get to the woods than straight back to the back of the property and my house and pole barn will both be in the back field.

Chairman Deapen: Any more questions from the commission? Okay thank you. Do we have anyone signed up to speak?

Administrator Sweazy: Jim Hodge.

Attorney Jim Hodge: I'm here on behalf of the Top Flight Landing HOA in general and in particular the twenty or so property owners that adjoin this site. The Association dates back prior to any of the ownership we're here discussing tonight. The association took over administration of this subdivision on January 1, 2016. We have been in the business of managing this area since then. Those association restrictions that applied to all of this ground initially would require the applicant to come before us and first seek our input as to their project and as to following the restrictions. We note that in the restrictions they modified those from what were originally the restrictions on the whole subdivision and the ones we follow. Those should have come to us before they were revised that way, but they didn't, so here we are.

Chairman Deapen: So, who made those changes?

Attorney Hodge: The deed sale between the Red 1 Properties and the current owners. Red 1 Properties took over when the subdivision did not develop out and that that group was sold to a different organization and eventually ended up in the hands of the property owners we're talking about now. The other aspect of that, the procedure aspect is the timing on this not faulting your letter it was perfectly proper, but we didn't get it until 8-9 days before the meeting, which left us short to do three things that are important to planning and developing people. One of those is line up your experts, experts in planning, experts in the development, experts in engineering, and we weren't able to do that in that short of a span of time. That requires more time. The next thing is because the applicant didn't come before us, there was no time set for any meeting there and no

opportunity for input there. We ask that still be done. Next, when someone seeks to change how a development is going forward, those changes can be accommodated by a binding element. There's been no proposing here for any such means of correcting the record if you agreed with me that some correction was necessary. But a binding element is one way to do it. We haven't gotten that far yet. That sort of covers the matters I wanted to talk about. In addition, one of our adjoining property owners is here to address more on that. I'll be glad to answer any questions.

Chairman Deapen: You heard testimony already that this piece of property isn't covered by your HOA with restrictions. Are you agreeing with that or disagreeing with that?

Attorney Hodge: Disagreeing with that because they didn't extract it from us in that process of the Deed of Declaration requires. If you're in and you want to get out, there's a way to do it, you come to us either with our Board in place or you come to us with 75% of the signatures of the property owners in the subdivision, as required by the restrictions, then you get the change made and that was not done.

Chairman Deapen: I guess I'm going to ask both of you to provide what ever evidence you have of your position. Because all we have right now is oral testimony.

Commissioner Mudd: So, when he purchased the property he thought he was not part of the HOA, there was nothing to lead him to believe he was?

Attorney Hodge: And when you look at his deed, it looks that way. They set their own restrictions up.

Commissioner Mudd: But in all good faith he didn't know he had to come before you?

Attorney Hodge: I don't know what he knew but I can see what's on paper and it wasn't the same as what we had.

Administrator Sweazy: I do have a copy of the deed for this application if anyone wants to see it.

Commissioner Brown: I guess what is the concern with trying to go from an R-1 to AG-1 zoning in the first place.

Attorney Hodge: One thing, some of you know, that we have a County Farming Ordinance. It prefers the results of farming to the results of residential. Example: If farming produced an odor that you don't like lofting over your residence the farming ordinance prevails. If farming produces a noise that you don't like penetrating your residential area, the farming ordinance prevails. So, without knowing what the outcome of that is, if we're going to AG, we know that farming can be an operation that the uses put to on this property. So, we could have 20 residential property owners faced with a farming operation that they did not anticipate because they thought they were in an entirely residential development.

Chairman Deapen: It sounds to me like you're trying to get Planning & Zoning to enforce your HOA restrictions. Explain to me why I'm incorrect.

Attorney Hodge: We are trying to get you to slow down until we can administer to what we're supposed to do. Your slowing down is basically a procedure issue for advising we didn't have adequate time, not your fault just the process that occurred, and if we had of had adequate time then we would have had the greater argument to uphold the terms of more expert witnesses.

Commissioner Travis: How much time to think you all need?

Attorney Hodge: A minimum of two weeks.

Commissioner Travis: How much time do you need before you come back before this body?

Attorney Hodge: I would say your next meeting.

Chairman Deapen: That falls within our bylaws so that's not a difficult request.

Commissioner Hunt: Mr. Whitehead, when did you purchase the property?

Mr. Whitehead: We closed on it in November 2022.

Commissioner Hunt: Mr. Hodge, when did you become aware that there was an issue with the HOA understanding?

Attorney Hodge: When we got your notice letter.

Commissioner Hunt: So, you had no knowledge of his deed?

Attorney Hodge: We heard some rumbles but didn't have any actual knowledge. We do have one more member here to speak.

David McCarty: 128 Parkers Cove. My property adjoins his property. In speaking with Mr. Whitehead, a couple of weeks ago he mentioned he was planning on putting a motor cross track on his property because they had been looking for a property like that and this property was perfect the way it was laid out for a motor cross. I don't think there's a place for a motor cross in a subdivision. People work at night who sleep during the day and with a motor cross during the day people will not be able to sleep. It might even affect our property values. If that's his plan to do that, I'm against that. I don't think that needs to be right up against people's houses. People adjoining this that bought the property, they value that they bought in a subdivision market where a golf course is going to be. I know the golf course went under. We have been there 17 years and moved here for the rural quiet atmosphere.

Commissioner Wheatley: Did he say a competitive track?

Mr. McCarty: I don't know, you will have to ask him.

Commissioner Wheatley: I'm under the impression whether it's residential or agriculture if he wants to put a motor bike track there it doesn't matter how its zoned. It's private property, he can put putt putt golf for his kids.

Mr. McCarty: But if he goes back under the restrictions under the subdivision. It says no businesses are allowed to be operated inside the subdivision.

Commissioner Wheatley: But if it's not a business and just for his personal use, you still wouldn't be able to stop him.

Chairman Deapen: Mr. Whitehouse, do you want to come up and address any of these issues that have come up?

Mr. Whitehead: I'm not going to deny my son rides motor cross. We are not putting in a public motor cross track. The insurance alone would be insane. We're respectful we don't ride on roads, we don't practice at 6am and we don't do it at midnight. I was buying 3 acres off Early Wyne and I saw this property on Zillow. I said I can afford this property and I always wanted to have 29 acres. I was like this is a dream come true for us. We drive through the neighborhood and there's people on golf carts, side-by-sides and go-carts. I love that, that's a fun community. I wanted this property, so we closed on it. Golf carts in the driveways and I assume they drive these around, Halloween is probably fun. I have five children; this was exciting for us. This is all turning into a nasty rumor thing that I don't understand. We're just normal hardworking people that just want to buy some property and live our life on it. I don't know what else to say. We will have some jumps on it, fish the lake, bow hunt it and probably deer hunt it. But I'm allowed to do that, it's 29 acres, as long as I'm shooting at that safe berm, you're allowed to do that in this state. I'm not going to be doing this at 1 and 2 in the morning. I'm not that person. I'm very respectful. The neighbors that have met me, I'm doing work for them for free, I'm a neighborly guy. None of these people has ever come to me, other than the guy that just spoke. We were civil and actually he offered me his property, he had thought about putting it on the market. That was a neighborly thing. I don't know what else to say.

Chairman Deapen: I want to make it clear that I'm not satisfied at this point that we're not being asked to enforce HOA restrictions and that's not our job. Having said that, you heard Attorney Hodge talking about meeting and talking to you. Are you willing to do that?

Mr. Whitehead: You ask about proof of evidence. I have the actual contract.

Chairman Deapen: You're not answering my question. Are you willing to meet with them?

Mr. Whitehead: I don't want to meet with the HOA, I'm not in the HOA. I have no reason to be a part of that. That's why I bought acres outside of HOA.

Chairman Deapen: What do you have to offer?

Mr. Whitehead: I have the purchase contract.

Administrator Sweazy: I have the deed with written in restrictions.

Mr. Whitehead: There's the restrictions with the purchase contract that was signed.

Chairman Deapen: The restrictions here are: The house must be 1800 square feet and be all brick and or stone and or hardy board, and must be stick built on site. All house plans must be approved by the developer. The land cannot be further subdivided unless the subdivided portion is to be sold to an adjoining property owner. No hogs/pigs are to be kept on the property. No breeding of dogs, and or chickens on the property. Any fencing must be 4 board horse fencing.

The driveway is a shared driveway with the operator of the sewer treatment plant. The pond is shared with owners that adjoin it and they cannot be denied access and use of the pond. Any questions from the commission.

Commissioner Travis: I would asked our Attorney his thoughts.

Attorney Dale: That's not a question we can answer. It's between those individuals.

Chairman Deapen: I think Attorney Hodge is representing the original restrictions. Our bylaws set a normal process to use. So, two weeks isn't a difficult situation. All we have to do is agree not to vote on it tonight. My concern with that is that it sounds to me like you all have a legal dispute and you're not going to get that resolved in two weeks.

Attorney Hodge: What two weeks does is let us line up our defenses so to speak or lets us seek other means of resolution. The time just allows us to properly seek the things we would do if we had the time anyway. One of those is to line up our experts. Two, seek other means of resolution. I mentioned coming before my board, another way is mediation, which is where the courts are going to send us anyway if we go there. All civil litigation now in our courts, are sent to mediation for a resolution before you do the litigation business. Or the other means of resolution would be direct contact with the applicants in some measure of trying to resolve the differences between their restrictions and our restrictions and their intended uses if it is rezoned and the farming ordinance would allow things that may be un-nice to us. Those would be the means of accommodating some measure of success. You might get that in two weeks, and it might be more like four weeks. The binding elements I mentioned are another way which is often resolved right here at this table.

Commissioner Wheatley: So, the person that sold this to you. Are you guys saying he changed...

Attorney Hodge: Yes, those restrictions are different from the ones we have.

Commissioner Wheatley: Shouldn't he have brought them to you before it was sold is that the case?

Attorney Hodge: It should have but it was not.

Commissioner Hunt: So, is Red 1 the one that changed it.

Attorney Hodge: Somewhere in that line. I don't know if it happened with Red 1 or before Red 1. When it did occur we know one thing, after we were giving authority over the property on January 1, 2016.

Commissioner Hunt: Do you have the deed of what it was in 2016 on this 29 acres and it still had restrictions with the HOA?

Attorney Hodge: Yes.

Commissioner Hunt: Do you have that with you?

Attorney Hodge: No.

Administrator Sweazy: Does the old original restrictions include or exclude, is there verbiage over what was golf course land? I know originally it was going to be a golf course and homes. I didn't know if there was anything that specifically included the golf course property because at the time, they wrote them they were thinking that was going to be greens.

Attorney Hodge: If I read correctly, the instruments that caused this to happen, here is what I believe occurred. When the golf course was abandoned and the properties went out as other development properties were sold off as other development properties. The sales that occurred at that point were made by new sets of restrictions and attempt to make those work on the new properties by saying the property owners that sold this account for 75% of the property owners in the body of property. In other words, what they were saying to the buyer is there's two lots or three lots in this and all 2-3 of us people representing 75% of the property owners in this mini development. But that constitutes 75%, rather than the original restrictions that we're under that said 75% of all the properties owners in the development had to make those changes. Well there's a far difference between 75% of 100 and some lots and 75% of 2-3 lots. I think that disregard for those original restrictions that tried to make 75% of 2 or 3 look like 75% of everybodies approval, I think that's how that happened.

Chairman Deapen: Lets be real clear here. I'm not recommending we act on this tonight. I'm recommending to take this to the next meeting. What's going to happen at our next meeting is you're going to have to be able to prove to document what your positions are, why they are what they are. At the end of that meeting we're going to take a vote. Unless he withdraws and makes some kind of agreement with you. I don't know how that vote will come out. He has a right to an answer at that next meeting unless you two come up with something different.

Administrator Sweazy: Real quick, the next meeting is March 16.

Administrator Sweazy: Back to old business. Docket 1 under old business is proposed amendment to Article V, of the Taylorsville-Spencer County Zoning Regulations establishing Section 500.1, R-1T, Single Family Townhouse District to provide regulations to govern the location and placement of townhouse development.

Commissioner Brown: Valerie I got most of everything. The two items were the graphics, and I didn't really know how to fix without making it more confusing. I've got all the information on two figures and its all there. If I tried to do it any other way, I was afraid it was going to get worse. Everything else looks great. At the very beginning of it I did put The Articles in the current Zoning Regulations shall apply where not explicitly stated in this Section. That way you can fall back to whatever the current is.

Commissioner Hunt: So on 6b, that second sentence where it says the driveway width shall not exceed twelve feet for a single-car garage or twenty-four feet driveway width for a two-car garage. My question there was, shouldn't we have a minimum?

Commissioner Brown: If we went with a minimum you have to go with 8 and 20. You don't need to get over 12 or 24 because you start loosing your lawn.

(Discussion amongst commissioners regarding driveway width verbiage)

Commissioner Brown: Change 6b to read: Where a garage is provided within the lot as part of the single-family dwelling structure, the driveway width shall be twelve feet for a single-car garage and shall be twenty-four feet driveway width for a two-car garage. If a two-car garage is provided, and/or a 24 feet driveway width, the lot frontage shall be at least 30 feet.

Commissioner Travis: The only other is having additional parking within 100 feet. I think we should lengthen that out.

(Discussion amongst commissioners regarding additional parking)

Commissioner Brown: 6a, change to: No common area parking space shall be more than 200 feet.

Chairman Deapen: Do we want an escape clause in here anywhere? We have that built into some of the other things we have. Lot size, lot shape, we can make exceptions on that if we choose to.

Administrator Sweazy: It's in there that you all can do a variance on the 3 to 1 ratio.

Chairman Deapen: Yes, but it's not written in here.

Administrator Sweazy: That's in the regulations.

Attorney Dale: It's in the Statutes that allows the commission to grant a variance regarding subdivisions. That might very well fall under that.

Administrator Sweazy: These will be brought in for plat approval.

Attorney Dale: I think it would probably fall under the provision.

Chairman Deapen: So, we would be okay with that.

Attorney Dale: I think you would be okay with that.

Commissioner Faue: The last sentence in the first paragraph will cover that.

Chairman Deapen: If a developer comes in here and says I have a problem with this right here is there anyway I can do this instead.

Attorney Dale: It has to be a dimensional variance.

Chairman Deapen: Do we want to make a motion to forward this to Fiscal Court and then the City?

Commissioner Brown: I make a motion to forward this to Fiscal Court and then the City with the changes for the Townhouse Regulations, R-1T, Single Family Townhouse District.

Commissioner Faue: Second.

Chairman Deapen: Read roll.

Administrator Sweazy: Roll called, motion carries.

Administrator Sweazy: Next meeting will be March 16, 2023.

Commissioner Travis: Motion to adjourn.

Commissioner Wheatley: Second.

Chairman Deapen: All in favor say aye, any opposed, meeting adjourned.

Attest:

Secretary

Chairman