



Benton County Board of Appeals

November 10, 2016

10:00 a.m.

Benton County Development Department, County Planning
905 NW 8th Street, Bentonville AR 72712

Meeting Minutes

Call to Order: This initial meeting was convened at 10 a.m. by the Planning Director, Kevin Gambrill.

Roll Call: Nate Bachelor, Dietrich Bengs, Mark Curtis, William Holley, Michael Hooper, Nick Jewett, Brandon Pinkerton and Matthew Zachary were present. Joel Jones and Kim Wilkins were absent.

Staff present: John Sudduth – General Administrator, Kevin Gambrill – Director of Planning, Derek Linn – Senior County Planner and Tracy Backs – County Planner were present.

Public Present: None

Disposition of Minutes: Not applicable

General Public Comment: None

Old Business: Not applicable

New Business:

Mr. Gambrill: This is our administrative meeting. This is the first meeting of this Board of Appeals as written in the Planning and Development regulations of Benton County. These regulations were adopted in February of 2014. In those regulations, there are stipulations for a formalized Board.

Introductions:

Kevin Gambrill: I am the Director of Planning here in Benton County.

John Sudduth: I am John Sudduth. I am the Administrator with the County. I want to thank Kevin (*Gambrill*); and I want to thank you all for serving on this Board of Appeals. About five years ago, when I was first with the County, we didn't have such a Board. It was discussed at that time that we needed to have a Board of Appeals. It is a requirement of our regulations now and it is a requirement by the State building codes. You will be looking at more than just land use laws which is the planning

regulations. There may be times when you will be asked to provide direction and interpretation on building, mechanical and electrical codes. What they call here in Arkansas, the Arkansas fire codes. It is a little bit more detailed. That's why, once you get around to everybody, you will know that we have a very diverse set of skills here. I really greatly appreciate your willingness to serve on this Board.

Mr. Curtis, thank you sir for being here. Mark Curtis can talk a little bit about his service to the County. Mark served as not only a Planning Board member but he served as Chair. He was very instrumental in getting these regulations [adopted] that we work with now. His overall knowledge and his service to the County is second to none. I greatly appreciate him. Thank you all.

Mr. Gambrell: Yes, thank you very much on behalf of John (*Sudduth*) and the Staff, just out the gate, we want to make sure that we acknowledge the fact that we appreciate you all coming here and availing yourselves, especially during the middle of the day like this. Typical appeals that come before you will be after normal work hours. We will usually start at 6 p.m. as needed. That is important because this is such a new setup in this County, we will not know immediately what the frequency is for the formalized appeals. That being said, at this meeting we will decide on a next meeting; perhaps in December, hopefully before the holidays, on a second administrative meeting in this room before the end of 2016. Then we will work through a 2017 schedule as needed.

Introduction of Derek Linn, Senior Planner: He helps with a lot of the intake of our tract splits, subdivision requests.

Introduction of Tracy Backs: County Planner. She is essentially our secretary for the Planning Board and the Board of Appeals. She is our administrative right hand woman. If you need information, she knows how to get it.

Introduction of Taylor Reamer: He is my immediate subordinate. He is our Planning Manager. He handles a lot of the day-to-day management of what goes on in the Planning Division. He could not be here today but he thanks you all for coming.

Introduction of Susan Grove: Assistant to the General Administrator, John Sudduth.

Introduction of Brandon Pinkerton (BP): I am an alternate on the Board. I am an electrical engineer; and I work for a local engineering firm in Rogers. I have been doing that for about 15 years.

Introduction of Michael Hooper (MH): I am an IT guy for the United Health Services. I have been around here for about two years now.

Introduction of Dietrich Bengs (DB): I am an appraiser with the Washington County Assessor's Office. I have been in real estate most of my life since age 20. I know about annexations and financing subdivision and things. I used to be a banker and making inspections on interims and things like that. I think I would enjoy this. I hope.

Introduction of Bill Holley (BH): My background is local government. I came here from Southern California by way of Oklahoma. I am glad to be here. Northwest Arkansas is a wonderful place. The planning that has gone on here in particular is very impressive.

Introduction of Nate Bachelor (NB): I am with CEI Engineering. I am a licensed civil engineer. I have been in Northwest Arkansas for almost 12 years now doing land development. My current position is project manager.

Introduction of Nick Jewett (NJ): I am with the City of Bentonville full-time water utilities. Construction engineering, surveying background for the past 15 years. Day-to-day operations, GIS Administrator for the City for utilities, project management, civil engineering. Currently chairman of the Centerton Planning Commission, Board of Zoning Adjustments for the last five years. Was chairman of the Parks & Rec but stepped down due to too many obligations. Glad to be on board.

Introduction of Mark Curtis (MC): I moved here in 2003 and live on Beaver Lake. Was on the County Planning Board starting in 2008 until July of this year. I come from the north land. I got my degree from Minnesota and did my planning graduate work at Memphis State. Married a girl from Northwest Arkansas so that's how I got here. I am a curler and you'll hear that a lot because it's lots of fun to do.

Introduction of Matthew Zachary (MZ): I am a senior manager with Wal-Mart Real Estate in their construction department. I manage the grocery pick-up projects that are flooding the country. Prior to that, I was on the remodel team and special projects team. Notable projects locally are Project Jive over on Horse Barn Road. That was one of our projects. The big drive through at 5260 Pleasant Grove, Wal-Mart with the pod expansion and the drive through pick-ups as well. I moved here in 1994 to go to the University of Arkansas. Prior to Wal-Mart, I was a business owner. I owned Floors Unlimited Plus which was a flooring store in Bella Vista which is now where Lowe's sits. I am also a general contractor in the State of Arkansas. I build houses as well.

Mr. Gambrill: It is great to have you all. I think as you have now heard, we have a very wide array of development experience whether that's on the ground or at the 50,000-foot level and anywhere in between. I think we have a very good makeup of Board members and I am proud of the array that we have selected. For those of you who are slated as an alternate, let's be very clear, your roles are no less or more than anyone else. It is really a means to establish a pecking order to arrive at quorum to make official administrative decisions. It has nothing to do with your abilities. Those things are just set in rules and regulations that we have seven primary and three alternates. The fact that we have them is fantastic. I just want to make sure everyone is aware of that.

We will now continue down our agenda. Item number four; "Implementation Schedule." 2016, this month and next month, is going to be coming to a close very soon; and most meetings will be happening after normal work hours. I think I made reference to that. What everybody should know, and I will reiterate, is that this Board

will be handling appeals from not just Planning. It may start out that way, we don't know what 2017 will hold with respect to enforcement of our regulations, whether it's from our building safety and fire code, from Planning or from Environmental. We have an Environmental Division here that has three uniformed officers now. They are constantly out opening cases for illegal tire dumps and lots of stuff going on out there that I don't deal with day to day; but that this Board may very well have an appeal if enforcement in this County continues the way it is going. We are not doing less enforcement; we are doing more. The regs may or may not be new or updated; but we continue to enforce the regs that we do have. With that being said, the frequency of appeals you see may very well go up. Don't let the frequency of maybe not having a formalized appeal before you, negate your roles and responsibilities. It's almost like the National Guard and Reserve, when we need you, we're going to need you.

The fifth item on the agenda is the most important point of business for the first meeting. All of you should have accessed via E-mail or on County Dashboard and looked at it previously, a copy of the draft by-laws. This Draft of our by-laws that Staff, with the direction of my boss as well as our County legal representation, have come up with. It is fairly standard. A lot of the language that you see before you is from our existing Planning Board by-laws. There are slight differences in some of the language here. If any of you have served on public boards before, most of the language you see in here is pretty standard. I wanted everybody to take a look at it before we go section by section and get familiar with how it is structured. If you have any immediate questions or if you would like to have an open discussion about them, I would like to offer five minutes for everybody to sit together and read them. You can do so in silence or you can raise any questions you have. We would like to take five minutes just to have a general absorption of what is before you.

While you are reading it, I will bring up a couple of points. Article 1 of 1.2, on the first page, *missing three consecutive regular meetings or a total of 20 per cent or more of the meetings held during a calendar year, except in extra ordinary cases shall constitute cause for removal.* It does not mean that you will be removed. It is a qualifier to ensure we receive attendance and quorum. When we get to the Appeals level, you have to have a decision. You can't not have a decision. After this, it would go to the court of jurisdiction which is usually Circuit, if I am not mistaken. That is also in our Planning and Development regulations. We actually use the same language there. Even though these aren't the Planning regulations, [these are your by-laws] we didn't want them to necessarily conflict with what we have on the books.

You will obviously see in Article 2, starting with 2.4 at the bottom, it says "*County Staff.*" We are essentially your secretary. We will give you information, and if requested, will supply you with additional. We do a pretty good job with reports. We always bring up-to-date copies of the by-laws. We always bring all the administrative material, people's names, addresses. If you don't happen to have it with you, don't feel like you have the responsibility to always have these items with you. We have them and can get them to you on demand.

BOA member: Thank you for scheduling meetings on Thursdays.

Mr. Gambrill: Well, we won't do them [all] on Thursday mornings.

Mr. Sudduth: That will be open to you all to discuss. Thursday mornings are normally very busy mornings; so I don't know if that is when you really want to hold your appeals. That is when this first meeting was scheduled; but that's going to be up for your discussion when you want to have your meetings. County staff will schedule our work around when you all want to have your meetings. I feel you need to have something fairly scheduled so you could count on it.

I would also like to say a couple of things while you are reading. We do have a Benton County Quorum Court member that is a part of this. His name is Joel Jones. We have a new County judge coming on January 1. He may reappoint Mr. Jones who is not here. He attends a lot of meetings. I am sure if we have an appeal, he will be here.

Also, Mr. Curtis termed out off of the Planning Board. He has to wait a year before he can get reinstated. We hated to lose him. Just so you know why he currently is not on our Planning Board. Whenever it is convenient for this Board to meet and schedule, that's when we will accommodate. Thursday mornings, historically, just does not work. It is just a very busy time with other staff meetings but once again, do not let that hinder you all in any way. We are here to accommodate you when you can meet. You are the most important people here.

Mr. Gambrill: This obviously took some logistics with me in E-mailing and setting something up that seemed to work for the larger majority. I know a lot of folks had to work their own schedules to make it happen, so we are very appreciative of it.

Let's go through some of these articles here that Staff had to look at. In Article 3, 3.1, Board of Appeals meetings shall be open to the public on page 2. *The Board of Appeals shall meet on the second Thursday of each month or as otherwise announced.* That was because we are meeting on the second Thursday of the month and we haven't otherwise announced it. That language is that way for obvious reasons. After you all meet enough, you may feel that these by-laws need to be changed. We thought that we definitely should put in some day of the week, and some set frequency, in here, but leave a little bit of a qualifier just to satisfy rules and regulations because the State ACA basically says that you have to meet "regularly." That's why that language is in there.

Mr. Curtis: What about the FOI stuff? This is a meeting of a County Board so it has to be announced to the paper, right?

Mr. Gambrill: Yes, when there is a formalized appeal, there does.

Mr. Curtis: But our meeting today was not announced.

Mr. Gambrill: It is administrative. It is posted on the County's Dashboard. That satisfies the basic minimum requirement for an administrative meeting. There are no decisions being made today that affect a formalized appeal. But that is a very good point.

Mr. Curtis: The reason I bring this up ladies and gentlemen, is simply for the fact that we had an ethics complaint on the Planning Board while I was a member of it. So, that is something that is paramount in my mind. I was interviewed by one of the ethics people from Little Rock who came up here and spent a day interviewing us all on this particular issue. The Board member was exonerated. It wasn't any major deal but it was brought by an attorney who felt that they were wronged. I want to make sure that it is understood that everything we do is open to the public.

Mr. Sudduth: Mr. Curtis brings up a good point. I just asked Staff if this meeting was being recorded. Everything we do is subject to the Freedom of Information Act. Most of the government people fully understand that. At this time, any reporter can walk in and say, "I want a copy of this or that." By State law, you are bound to give it to them. That is just the way it is when you are in government work. Any off the cuff remarks, anything that is made, anything that goes on record...don't say it, don't put it in writing unless you want to read about it on the front page of the news. That's a good point. You just have to be very businesslike, factual, truthful and make sure that what you say and/or do, any transmittals is what you want to read about on the front page of the newspapers.

BOA Member: Does Arkansas have a law about quorums getting together outside of ...?

Mr. Gambrill: Yes, it is "ex-parte communication" - December's meeting is going to be more on the Robert's Rules of Order, ex-parte communication and a lot of the ethical stuff. Being a practicing professional planner, about a third of the AICP certification is on ethics.

Mr. Sudduth: Not that it is strict but if you have two Board members meeting, that is a meeting. In other words, you don't do it. You meet in this room.

Mr. Curtis: Let me also say, again from my experience on the Planning Board, after the Planning meetings we sometimes went and had dinner. The Planning meeting got over early, there was a short agenda, we would go and have a dinner. That is perfectly allowed. We didn't really discuss Planning Board items anyway. We got up on people's families and just normal stuff. It is not forbidden. It is just a matter of making sure everybody understands what the ground rules are.

Mr. Gambrill: As long as you have an understanding of the ground rules and when discussions outside of your formalized meetings start to go down the road of affecting your decisions, that is when the flag needs to come up. That is the simplest way I can put it. We will get into a lot of the legalities with FOIA, ex-parte communications, transparency, etc. for those who aren't already aware of that. That's going to be the basis for some of the future meeting material. I am looking at this as somewhat of a

proving ground to get you familiarized with Benton County; and, sort of help you all become better professionals in your endeavors here with serving the public. That's what I see going forward before we even get a formalized appeal.

Continuing with these by-laws, let me talk about section 3.1.1, meeting regularly and why the language is the way it is. You'll notice on 3.1.2, "*Upon filing a formalized appeal to the Board of Appeals, Planning Staff shall schedule a public hearing date to be held within 30 days of such filing.*" They file an appeal, then we have 30 days to actually schedule the public hearing. The clock starts to tick. Hopefully we can call everybody in to service so that we can get ourselves a quorum. We can get reports together and all the salient material. At that point, most of the materials administratively will already be available because it will have at least gone through Staff. If not, perhaps through a Planning Board. There will some base material already established when some early decisions were made upon what the appeal was based on. That shouldn't be hard to meet a 30 day. I just want to bring that up to you guys.

Article 3.1.3: *Special meetings may be called at any time by the chair or by any three members, provided that at least four days' notice is given.* So, either the chair or three of the members can call a special meeting but you must give four days' notice.

Article 3.2: *No formal business shall be conducted without a quorum and no vote shall be accepted from outside the meeting.* It is a good question, if Mr. Jones were calling in on my County-issued mobile phone right now, would he not have a vote? Is he outside the meeting?

Mr. Sudduth: No, he would be in the meeting. As long as you accept him and recognize his voice, you know who he is, he would be part of the meeting.

Mr. Gambrill: If anyone outside couldn't be in attendance and we had to mechanize a quorum somehow using some of the digital accoutrements that are available today, just know that there would be the potential to do that if we had to. We obviously don't want to meet that way on a regular basis but if we have to achieve a quorum in the worst of worst case scenarios, we would do that.

Mr. Sudduth: We will verify that for your next meeting with our legal counsel to make sure that is a legal prospect to do. If we don't have a quorum and we have an official appeal, that's an empty feeling. You don't realize how important you are until you don't have a quorum to make a decision and you have all the expense, the money, inconveniences to all the clients, the lawyers and not to have a quorum is a big deal. We will find out every legal avenue we can. We just need to make sure if you are not here and present does that really constitute that you are really in the meeting.

Mr. Gambrill: We will get that figured out. If we have to qualify the language or at least just make that known, in an open meeting, we will do that for the record.

BOA Member: Quorum is seven, correct?

Mr. Gambrill: Quorum is four. For seven primary members, quorum will require four because it is a simple majority. When you don't have four of your primaries, that's when you would call into service your alternates to satisfy that quorum.

3.2.2 at the bottom of page 2 is an interesting one. *The affirmative vote of a simple majority of those members' present shall carry the motion or resolution, except as otherwise stated. The chair shall have a vote at all times. The chair should not vote on procedural matter....*(meaning how you got there). The chair shouldn't vote except on the matter before him. *...except when the chair's vote decides the outcome. The chair should always vote on the ultimate issues concerning upholding, rejecting or modifying a decision of the Planning Board.* So, what that basically means is you are not supposed to be voting on the procedure itself. You are just supposed to be voting on the matter at hand.

Mr. Curtis: He is trying to cross all the "t's" here. If these are the bylaws, it probably should be extended to say Planning Board and the other commissions that we would be working with (i.e. fire, safety, environmental, etc.). The wording should be including all of those.

Mr. Gambrill: *The chair should always vote on the ultimate issues concerning upholding, rejecting or modifying....* an administrative decision. Just keep it simple.

Mr. Curtis: You would have to leave off Planning Board or add the other Boards.

Mr. Sudduth: I think what he is trying to say is, "*and other Benton County regulations as charged*" instead of just Planning Board.

BOA member: I think it also important to note there the majority of members present, not a majority of the Board. If quorum is four, the majority of four being three.

Mr. Gambrill: ...when a majority of the appointed members has arrived. You mean so 3..2..1?

BOA member: No. 3..2..2. *The affirmative vote of a simple majority of those members present.* So, if we have four, that's a quorum. The distinction between the members present and all of the members. The majority of seven is four. But for a quorum, the majority of four is three. There is a distinction there of how many affirmative votes would be required.

Mr. Curtis: In the Planning regs, there is a situation that only four are there and there is a quorum in the Planning Board, they have to have a 4-0 vote in order for anything to go through.

BOA Member: The whole point is, to make any decisions, you have to have a quorum present.

Mr. Curtis: According to this it is three votes minimum to pass.

BOA Member: I think it is an important distinction that we make. We need four affirmative votes no matter how many members are present, right?

Mr. Curtis: And that is something we can either agree or disagree on.

BOA Member: I would think you would have to have a quorum voting one way to affirm a decision.

Mr. Curtis: I don't disagree to that. It is up to what everyone else thinks. I am saying that, in this particular instance, when we put the planning regs together, we struggled over how many people had to be voting. I believe this is for a Variance, Kevin (Gambrill)?

Mr. Gambrill: Yes.

Mr. Curtis: In that particular item, that's how we made the decision.

Mr. Gambrill: No, Waivers. No, you are right. Variances need two-thirds. Waivers just need a simple.

I have the section 3.2.2. This is a final draft we are looking at. This is a "track changes" version. We can, "on the fly," make any textual changes you would like to make right now. It reads, "*the affirmative vote of a simple majority of those members' present shall carry the motion or resolution,*" How would one want to restate that? It shouldn't come from Staff necessarily. It should come from this Board.

BOA Member: *The affirmative vote of a simple majority of the Board.* A simple majority of the Board requires four no matter how many are present.

BOA Member: Saying it that way, would that mean if you had your quorum of four present, then three voted, that would be a simple majority? You could pass it on three?

Mr Curtis: Right, the way it is written now. Yes, sir.

BOA Member: This would require four affirmative votes whether there were four, five, six or seven members present.

BOA Member: My opinion is that you would want four.

Mr. Gambrill: *The affirmative vote of a simple majority...* which is four. Do we want to revise simple majority to say four? Or is simple majority self-explanatory?

BOA Member: Put four in parentheses? I don't know.

BOA Member: *Simple majority...* (that being four). Provided the number of Board members doesn't change. If the number of Board members were ever to change, that

would need to be edited. If at some point in the future, there were additional members...

Mr. Gambrill: *The affirmative vote of a simple majority of the Board shall carry the motion or resolution, except as otherwise stated.* I am not sure why the "except as otherwise stated" is there. Again, some of this stuff is lifted from our Planning Board bylaws. Our legal counsel has taken a look at this. This did not come up as a flag but then again they are not sitting here.

Mr. Curtis: I think that's where we did the difference between the four and for the Variance (two-thirds majority).

Mr. Gambrill: ...*except as other stated*...because our planning regs don't specify the same levels of voting criteria depending on what you are going through. Again, this is the context of the Planning Board.

BOA Member: These should specify it. Maybe that needs to be stricken.

Mr. Gambrill: Here, for this Board, it's going to be a simple majority. *The affirmative vote of a simple majority of the Board shall carry the motion or resolution.* Is everyone okay with that plan?

BOA Member: My only concern with that would be this: And this is looking from the public's input...what's the purpose of having the meeting if you only meet a minimum quorum of four? Knowing you have to have all the votes and that minimum quorum to have a meeting to get whatever I am appealing passed.

BOA Member: Isn't it similar in most Planning Commissions?

BOA Member: I don't know that. However, the way that it is written, if you do meet a quorum and the majority votes in a POA or whatever, after a quorum is met, that resolution passes. The way that it was originally written makes a little bit more sense to me from the public's perspective. If I know that we are going to have a meeting and only four are there, I don't know if I would want to continue with that meeting if I had legal expenses of attorneys knowing the possibility that, even though we are having this meeting, it could be with no resolution. Therefore, we are going to have another meeting and then another meeting, etc.

Mr. Gambrill: Do you feel perhaps that there needs to be some sort of clarification on if this Board can vary the percentages of its votes in order to pass cases on an as case by basis?

BOA Member: I think if we are going to require a minimum of four vote in order to pass a resolution, then I don't think you should have a quorum unless all seven members are present or alternates.

Mr. Sudduth: Let me interject one thing on that. Serving on numerous Boards especially for municipalities and stuff, we also want to bring it up to the applicant. We

never know on a given night how many people are going to be there. If you have your expenses (attorney, travel time, etc.), at that point, it should be brought up to the applicant that we have enough for a quorum but it will take a majority of that quorum or four for this to pass. Do you wish to proceed? That way the applicant has the choice. We do the same with the Planning Board. Because for every member that's not there, you could argue that your chance for passing starts going down. That's what we do. There should never be many times where you go from one, one, one, one because you may have an event happen where you all can't show up for the meeting on one night but the next night we should have a quorum. We get it in record. They say yes or no, then they postpone it themselves. I think that is the fairest way to be with the applicant. There is no perfect scenario. You can't word it to cover all situations but it will be very rare, the amount of people that you have on this Board, that you won't have at least four.

Mr. Gambrill: Is the language, "*as otherwise stated*", there to take care of situations where the percentage to reach the quorum changes based on an application?" I would argue probably not. I think the quorum is still the quorum.

Mr. Sudduth: We would also need to cross reference State statute to make sure there is not a minimum amount to constitute a quorum. Regardless of what the Board does, you can only comply with the State. We need to probably cross reference that and make sure that four, if it's set by State statutes then you have to have a minimum of four, period.

BOA Member: My experience, having a full quorum or just four, doesn't necessarily justify approval or denial. I mean if you have four, and three vote in favor and one doesn't, there could be personal conflict for abstaining.

Mr. Gambrill: You would have to pull in your alternates. You would have to table it. A lot of that discussion can happen ahead of time. If you need to abstain yourself or recuse yourself, because you feel that there is an actual or perceived conflict, that's when we would pull in an alternate to achieve that quorum. Do you feel that, *as otherwise stated*, needs to be put back in; or, is everyone comfortable with, at least for this draft, having that sentence carried the way it is?

BOA Member: Say that there are not four votes. We have a quorum, there is four people, all four do not have a unanimous vote. It's three to one. Is that then a non-decision or that a decision to uphold the Board?

Mr. Gambrill: That is a decision.

BOA Member: Just like a tie is a decision.

Mr. Gambrill: And the decisions that you make will be put in the form. You will be presented with what you're deciding on.

BOA Member: I think it looks good for now.

Mr. Gambrill: We are going to go through this and then before we get to the end we can spend the next meeting discussing what "outside the meeting means." It sounds like there are some unanswered questions there. I don't know if 3.2 for instance, whether a mobile phone call in. We can get that clarified. I don't know that necessarily keeps us from adopting a version of these bylaws today. Do you all want to discuss?

BOA Member: I would go ahead and proceed with that as a starting point.

Mr. Sudduth: Any questions, anything you need, my Staff will take care of it. Again, thank you all very much for being here.

Mr. Sudduth excuses himself to attend another meeting.

BOA Member: I think it is pretty good building grounds.

Mr. Gambrill: I am working on 3.3 at the top of page 3. Distributing of agendas, *Public hearings shall be conducted informally...* this is standard language. I don't want to call it "boiler plate" language but it is. This gets more into the Robert's Rules and expediting the meeting. In calling for a motion, discussion, points of order, clarification, what are we ruling on, etc. It will be the Chair or the Vice Chair in that Chair's absence job essentially to make sure those things are facilitated forward.

BOA Member: The second to last paragraph (of 3.4), the word, *defy*? *It is not the intent in the public hearing to defy the members and their responsibilities...* Should that word be *define*?

Mr. Gambrill: Mr. Curtis, do you want to speak to this? Have you ever looked at this before? This comes from the by-laws of the Planning Board but we carried it forward.

Mr. Curtis: It is supposed to be *deny*. I also want to make the same comment that I made earlier about the special session of the Planning Board. It is supposed to be the Appeals Board. Just so that we get all the 't's' crossed. We had one of the Quorum Court members read every line of the nine chapters of the planning regulations. He was putting in commas and correcting spelling. He did an excellent job and I commended him for it. It made the meetings go on much longer than they should have but it got us a pretty good document. You see that there are still a few blips in the screen here.

Mr. Gambrill: *Rejecting or modifying a decision of the Planning Board...* I would propose that it be just, *Rejecting or modifying an administrative decision.*

Mr. Curtis: Right.

BOA Members: Agreed.

Mr. Gambrill: That is essentially what this Board's ultimate function will be. Agreed?

BOA Member: Yes, that is fine.

Mr. Gambrill: Alright. Thank you, Mr. Curtis. We will be looking for Planning Board language in these bylaws. 3.5 Public Comment. This is standard for our Planning Board anyway...*the Board may offer 3 minutes for individuals, or 10 minutes for a group.*

Mr. Curtis: In the appeals that I have been part of, Kevin (*Gambrill*), there is no public comment because it is between the Appellate and the Appeals Board. The Planning Staff has a part in it to present their case of what the Planning Board decided.

Mr. Gambrill: I agree with you. I think the context of this is really more salient to the Planning Board and its makeup, not necessarily this Board.

Mr. Curtis: No question. This is a Planning Board reg that we have to offer public hearing. We have done the appeals in a couple of different fashions. We haven't had that many appeals in the eight years that I was on the Planning Board but the few that we did have, one was very contentious. We had it in the court room. It was run by the County Judge. That was because there were three JP's on the Appeal Board. The County Judge ran it as the facilitator.

We had another situation where the County Judge was the facilitator and the three JP's were the Appeals Board. They allowed the Planning Staff and me as the Planning Board Chairman at that particular time, to make presentations. It wasn't just the Planning Staff. The Appeals Board, the three JP's, felt they needed....they weren't sitting in the Planning Board meeting the night we heard the project. They wanted to hear "from the horse's mouth" so to speak. I made a 20-minute presentation about what we went through that night. It was a very contentious issue. The developer was going to appeal the decision to the Circuit Court. He was very upset with us because we didn't allow him to do what he wanted to do. I made the presentation at that particular time. So, we have done it some different ways. What we hear could come in a different fashion too is what I am saying to you all. The public has never gotten a chance to speak at an Appeals Board hearing.

Mr. Gambrill: Yes, I think Mr. Curtis is on to something. At that point, especially if you are appealing a decision by another Board, that has already had a Public Hearing with public comment, and things like that.... This is something you all can decide. Staff would simply offer up...*During a formalized appeal hearing, the Board may offer individual or you strike it.*

Mr. Zachary: I would leave the right to comment. I think in your (*Mr. Curtis's*) situation that Board had already heard public comment. If we get an appeal, I haven't heard the comment of the neighbor or whatever... I haven't heard what the neighbor has to say about it. You (*Mr. Curtis*) already did in your examples because you were already on the Board. The public comments were already made to you and you guys were in the appeals process. Our Board is set up to make that decision in that instance;

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and I personally would like to hear what some of the public comments are because they might be justified.

Mr. Curtis: And they are Matt (*Zachary*), but let me also say that as the Appeals Board, we would be presented with the word for word discussion that happened and it would be our job to make sure that we school ourselves on that before we got up there on that night. All that would be given to us by the Planning Staff. Everybody that spoke at the Public Hearing, their items would be there verbatim. You wouldn't hear the passion of the people; but you would read the words that the people said.

Mr. Zachary: And any new evidence or comments would just not be allowed?

Mr. Curtis: As the Appeals Board, we are not (at least this is my image) adjudicating the project itself. We are adjudicating what the Planning Board said about the project. Whether they allowed it or not. What we have to go by is the information already gathered. As the Appeals Board, we have the ability to go back and tell the Planning Board, if we feel that there is new information, they have to look at it again. What we are doing is, we are saying whether we think the Planning Board made the right decision in the right form. We are not the Planning Board, is what I am trying to say, I guess is the best line. We are not the Fire Safety Board. We are not the Environmental Board.

BOA Member: In response to what you (*Mr. Curtis*) just said, do we have the ability to remand something back to Planning?

Mr. Curtis: Yes, that is one of our options. I think Kevin (*Gambrill*) will get in to that.

Mr. Gambrill: As I am hearing, you see me typing away. The language that you have in print in front of you is obviously a static document and this is sort of a working document here. Given everything we have discussed at this point, *Public Comment: During a formalized appeal hearing, the Board may offer individuals and groups an opportunity for comment. If a formalized appeal has yet to have had a venue for public comment prior, the Board may offer three minutes for individuals or ten minutes for persons representing a group.* You can alter the minutes. You may alter what you want at this point. This is just Staff's recommendation based on what I am hearing in front of me. I think there is some flexibility in there but it would be based on the discussion. It sort of captures the integrity.

BOA Member: Some of the hearings that have been through Planning multiple times, will have a pretty good history, time line, events. Everybody can review so that we are all on the same page.

Mr. Gambrill: This is a very good discussion because it is setting the tone for future Board of Appeals whether it is this body or another.

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BOA Member: The Planning Commission sat and listened to one hundred people speak for three minutes a piece on why they didn't want a little league field right there already. When you get to an Appeals Board, if you had those same hundred people take those 300 minutes saying why they don't want a little league field, is not necessary. Somebody has already done that.

BOA Member: I agree with Mr. Zachary. We should have the option. Leave the *may* in there. There may be come a time when we want to. Who knows?

Mr. Gambrill: Well if there isn't any further discussion on it, we can leave section 3.5 as presented on the screen. We are going to go into Article 4 on page three now. This is just your committees, the ability to form special committees, if you feel they are necessary. If you don't feel that you would like to remand something back to the Planning Board, or if you want to table a decision, you can form a committee between the time you table it and the next time you convene. That is essentially what that is. I think some of you might be familiar with how committees work but there is a section there that deals with it.

Meetings of committees shall be called by the Chair or any three members.

Article 5, page three: Records, Actions, Studies, Recommendations, Public Access - covers Freedom of Information. We just keep the files open and we record everything, not only on the audio but after it is done we actually put together formalized minutes. Then we go over to the Clerk's office and get them recorded once they are adopted and approved by this body.

Article 6, Changes to These By-Laws, Timing, Two-thirds Majority -

6.1: *These By-Laws shall be adopted, and later suspended, changed or cancelled after affirmative vote of two-thirds of the membership of the Board of Appeals.* So, that means everybody.

Mr. Curtis: Of the seven, not the ten.

Mr. Gambrill: Correct, the primary. If you all want to make this distinction, sometimes it isn't inherent that the distinction between the primary, and if you don't have a primary, an alternate...I think an alternate can serve in that capacity much like they do for achieving a quorum. I will get that clarified. I don't know that we necessarily need to adopt the language or amend the language as it is stated but I will get clarification.

Mr. Gambrill:*simple majority of the membership of the Board of Appeals.*

Mr. Curtis: So there is a tougher standard to change the rules, that's all.

Mr. Gambrill: Good call. That's the end of the by-laws as written on the screen. Good run through.

Mr. Curtis: I would then move that we approve these by-laws. Motion to approve the by-laws.

Mr. Bengs: Seconds the motion.

Motion approved 8-0.

Mr. Gambrill: Agenda item 5. The first hour we have a very good chunk of this agenda taken care of. The last major order of business will be agenda item 6, the elections of your officers. You are required to appoint a Chair and then appoint a Vice-Chair. Folks, it's your floor.

Mr. Pinkerton: I nominate Mr. Curtis as Chair.

Mr. Bengs: I second that.

Mr. Gambrill: You may recuse, Mr. Curtis, or you may accept.

Mr. Curtis: Can I nominate somebody else?

Mr. Gambrill: You may.

Mr. Curtis: I would like to nominate Mr. Holley.

Mr. Holley: I would like to decline in favor of your taking the Chair.

BOA Member: The reason why I would say this is that you have the expertise and the familiarity on the Planning Board. This would help us. We need your expertise. We need a leader.

Mr. Curtis: Okay.

Mr. Gambrill: Do you want to make a motion? The motion would be to elect Mr. Mark Curtis as the Chair of the Board of Appeals.

Motion carried 7-0 with one abstention.

Mr. Gambrill: Motion passes. Congratulations Mr. Curtis on your chairmanship. Now, appointment of your Vice-Chair.

Mr. Pinkerton: I nominate Nathan Bachelor as Vice-Chair.

Mr. Holley: I would second that.

Mr. Bachelor: I would accept.

Motion carried 7 - 0 with one abstention.

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Mr. Gambrill: Motion passes. Congratulations Mr. Bachelor. Thank you.

Item 7 on the agenda, State and County Enabling Legislation - I handed out some paperwork to you all. I am going to start off with ACA, it's a one-pager. This is simply a cut and paste. Anyone can go on-line right now and search State statutes. I just want to bring it to your attention for the record, ACA section 14-17-203. The subchapters are County Planning Boards. Starts off with local government, goes down to County government and then goes to County Planning and then specifically County Planning Boards. A lot of this language doesn't get really specific to State Appeals Boards. However, I did start to bold out those words in the regs. If you go down to item (g), it says, *A County Quorum Court may elect to act as a board of administrative appeal....* It may but in this case, it doesn't. It used to and that's how you see it happen a lot, is that you have a three JP panel. In this County, we no longer have that. We have it this way. Just so this language doesn't confuse you about your make up.

(B) The County Judge shall be the chair of the board of administrative appeal but shall vote only in the event of a tie.... and that's to cover events where this Board doesn't exist in the State, rather you have a JP panel which we don't have. It doesn't necessarily mean that what we are doing isn't valid. We have regulations that say we are allowed to be made up of the body that we are made up of.

(C) The County Quorum Court shall determine the number of Quorum Court members who shall sit on the board of administrative appeals. We have one, Mr. Joel Jones.

(2) Any appeal concerning roads shall be appealed directly to Circuit Court. If it has specifically to do with roads themselves, and that's it, it's not going to come here, it will go right to Circuit. I just want to make sure you are aware of how you all came to be. It's mainly for Planning Boards and Commissions but there is an Appeals Board. The language just doesn't directly reflect the changes that we have made locally to this body.

Going down to the local Benton County planning regulations, this is Chapter 2. All our regs, by the way are available on-line if you just want to look at the screen really quick. Our website is going to change a lot. If you go under Departments and click on County Planning, from the home page, you will end up here. Again, we need to get up to date. County Planning, even though that is what you click on on the web, it then comes up as Planning Department and then there is my name and then all this stuff having to do with building. I don't deal with building permits. I am very familiar with them and work very closely with the Building Safety division, but this is the larger Development Department where Planning is just one division. Building Safety is another division. Environmental is another division. Don't let this confuse you. It will ultimately look different. But I digress. If you are on this page, you go on the County Development menu to the right, there is a link for regulations. In here there are ordinances and amendments. Much of this stuff needs to get up to date and it will be very soon. Each chapter of our current regulations is PDF'd individually. If you want to look at the whole regs and ever download it as a PDF by itself on your desktop

as shortcut or wherever at home, you can do that right here. But we have everything as an individual. What you are looking at for this meeting is from Chapter 2. Chapter 2 is the Administration and Enforcement chapter. If you look on page 2.2, the copies before you....

A Board of Appeals is hereby established.... It essentially goes through locally what you all are here to do.

Appeals of Interpretations: To hear appeals from administrative decisions with respect to the enforcement and application of the Ordinance and affirm or reverse, in whole or part, the administrative decision. This may include alleged error, misinterpretation, oversight, or other means of incorrectly applying the provisions of this Ordinance including the provisions of the Flood Damage Prevention program and the provisions of the International Building Code (IBC) as determined by their respective chapters.

This language is lifted directly from the Planning and Development regulations. It makes clear reference to the IBC. That's just so you all know locally where it comes from. That's where it's home is.

Land Use Determinations: To determine, in cases of uncertainty, the classification of any land use not specifically enumerated in this Ordinance. We don't have zoning in Benton County, we have land use map. If you have worked in cities, you know that sometimes a land use map, and many times, a land use map does not necessarily coincide with the specified zoning underneath it and visa versa. So, in Benton County, because we don't have zoning, we have land use compatibility. We can get into that at a future meeting. That's in our regs right now. Land use compatibility is one of the criteria that the Planning Board uses to base its decisions on when making a determination for a particular project. I just want to bring that up.

Membership and Terms: That just breaks down the makeup of the folks. I just want to make sure that everybody understands that "to the extent feasible" is what we have before us. We don't have a particular skill set. We don't have an attorney here, yet it is written on item sub ii. That's fine. It's just "to the extent practical." It does break down ...

1. Alternate Members

2. Removal and Vacancies and the

(B) Organization.

All this stuff is pretty much spelled out and further specified on the by-laws that we have adopted today. I just want to make you aware of this. You can take this with you. It's re-enforced basically by your own by-laws.

Does anybody have any discussion on any of the items either the State statute or the County regulations? You can, of course, E-mail us directly if you have questions or call me directly if you ever want to have a discussion on any of this stuff. That is what Staff is here for.

In am going to move to Item 8 on the agenda if it pleases the Board. Scope of Review on Administrative Decisions – I have already run through this. I did not know when we would get to this discussion. Basically, this isn't just for Planning Board appeals. We have discussed this several times. It would be for more than just that.

Final item: Next Meeting Date: I have an idea of when I think I would like to meet in December. I know December gets very very busy. Seeing as today is the 10th, and it's Thursday, I was hoping perhaps we could look at December 14th. That is a Wednesday. Either at 10 a.m. or 2 p.m., kind of buffering the lunch hour. Or, starting at 2 p.m. and everybody leaves their respective responsibilities maybe early that day and attends around 2 p.m. That's just something I am going to throw out there, but I would like to meet with you all again. I think this Board should meet once again before the end of this year to wrap up any loose ends or review some material. I would, of course, send some additional material to you all, upload it to Dashboard, come up with a potential agenda, run it by the Chair, of course. I offer that up for discussion because that is on today's agenda.

Mr. Curtis: Will there be a DRC meeting that day?

Mr. Gambrill: DRC's are on the second and fourth. If we met at 10 a.m., DRC doesn't happen until 1:15 p.m. anyway.

Mr. Curtis: Just for you all to know, a DRC meeting is Development Review Committee which is kind of a prelim before you come in front of the Planning Commission Board. It's when the developer comes and sits down with County Environmental, Fire Marshal, Road people, all the Staff people, and they gather to kind of get a 'what are you going to do?' This is what we want to do. This will work. This won't work type of things. It's a pretty important procedure that some of the developers make good use of.

Mr. Gambrill: We have them the second and the fourth Wednesdays of every month. The Planning Board meets the first and the third Wednesday of every month. Whenever you have a fifth Wednesday, it's what we call the "bye-week" because either one of those meetings does not occur.

1. **Other Business:** None
2. **Discussion Items:** None

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BOA Member: I make a motion that we adjourn.

BOA Member: I second that motion.

Meeting Adjourned: 11:15 a.m.

Next Meeting: Wednesday, December 14, 2016, at 10 a.m. at the County Planning office.

APPROVED THIS 14th DAY OF December, 2016

ATTEST:


PLANNING DIRECTOR

APPROVED:


BOARD of APPEALS CHAIR or
BOARD of APPEALS VICE CHAIR

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