

Harrisville City Planning Commission Meeting
Held at 363 W. Independence Boulevard
7:00 p.m. March 9, 2011

Commissioners:	Jeff Pearce	Staff:	Shanna Edwards (Secretary)
	Ed Saunders		Grover Wilhelmsen (City Council)
	Steve Weiss		Richard Hendrix (Mayor)
	Roger Shuman		Bill Morris (City Administrator)
	Bob Howard		
	Paula Knighton		
	David Eckersley		
	Kathy Hohosh		

Visitors: Ruth Pearce, Ed Miles, Shauna Iverson, Mikel Iverson, Michael Baird, Cathy Baird, Shane Ericksen, Mr. Rilen.

1. PUBLIC HEARING for the purpose of receiving comment on a proposed amendment to the Land Use Ordinance, Residential Land Use Title 11.08 & 10, to allow assisted living facilities as a conditional use as part of the “Residential Facilities for Elderly Persons.”

MOTION TO OPEN PUBLIC HEARING: Commissioner Saunders motioned and Commissioner Weiss seconded with unanimous approval to open a public hearing to receive comment on a proposed amendment to the Land Use Ordinance.

Public Comments:

Michael Baird 1375 North Highway 89

He stated that he thought this was put to bed two years ago. At that time, he understood the city was supposed to set an area in the city to provide this. In his opinion, this is a hotel for aged people and should be with other commercial enterprises and not in the middle of an agricultural zone. It is not right that developers buy agricultural land and change it for a purpose to benefit him financially. It is not doing justice to the people of this city if they let this go.

Mike Iverson 558 West Harrisville Road

He read a statement he had prepared which stated his disappointment with the developer to continue trying to strong arm this issue since he is certain the developer knows that the proposal violates the city’s master plan. He thought this was resolved two years ago. He reiterated that the land in question has been designated as agricultural to provide a corridor in the center of Harrisville to preserve the rural atmosphere. He said that preservation of rural heritage is the single most important concern to the community. Developers originally brought out that residents of their facility would benefit from living in the rural atmosphere and that is a principal reason for choosing this location. They would likely benefit, but placing the development in the middle of agricultural land will destroy that rural atmosphere. The developer bought the land knowing it was designated for agricultural purposes. Mr. Iverson said he can only conclude that the developer is planning on forcing his intent on residents by possible legal action against the city anticipating that city will back down because of the cost of defending case. Mr. Iverson said that he recalled the promise the developer made to land owners after pleading for them to accept

the plan, which was that if neighbors did not want the center he would change his plans and move facility elsewhere. Mr. Iverson said he wants to hold the developer to his original promise and he wants to go on record as opposed to this type of facility at this location. He does not object to a facility of this nature, and would welcome it in an area other than one designated as agricultural.

Shauna Iverson 558 West Harrisville Road

She expressed concern that the facility would be detrimental to the agricultural atmosphere she believes most Harrisville residents want to preserve. The city should adhere to the Master Plan, and when it is designated as agricultural, keep it that way. In her mind, this is a commercial business with the traffic flow, public access, and the acreage involved to house 65 or more clients, and can this really be considered residential nature? She suggests striving to hold on to what open space still exists.

Shane Ericksen, Family Tree Assisted Living

He said he feels bad that residents feel this facility will infringe on what they view as pristine agricultural property, but Highway 89 is a great place for assisted living. The purpose of their facility is to maintain some dignity for residents where they can live out their last years in neighborhoods. Busy areas on busy roads does not fit that picture. He talked about their other facilities located right in neighborhoods like the one they own in Morgan. He reminded residents they were invited to the open house for their facility in West Point, but no one except Jeff Pearce came. When he bought this property, he was told at the pre-meeting that if he could get past the corridor preservation with UDOT, the city would welcome it. He said they just had a study done that proves that this as an area that has the need for this type of facility. The property does not need to be rezoned. According to The Federal Fair Housing Act, anywhere you can build a residential home you can build a group home. He mentioned that this type of opposition is not new. Seasons Assisted Living is fighting this same battle in Farr West City. Family Tree Assisted Living has a reputation for excellent facilities in other neighborhoods, and he asked the city to consider them using their property for its intended use.

MOTION TO CLOSE PUBLIC HEARING: Commissioner Hohosh motioned and Commissioner Howard seconded with unanimous approval to close the public hearing.

STAFF REPORT: Chairman Pearce turned the time over to Bill Morris.

Bill Morris stated that the city was supposed to have an attorney from the insurance provider attend, but they provided information to Bill Morris to present instead. In answer to some of the residents concerns, Mr. Morris stated that some lawsuits and case law as recently as last fall show that essentially cities lose in this fight. He said that the city can spend a lot of money and lose because zoning and the general plan have been superseded by the Federal Fair Housing Act. If residents have an issue, and he said that they rightly do, they can take it up with their congressmen because congress has ruled that cities will allow this type of facility to go in any residential zone. The city can deal with set back and aesthetics, but federal courts have said these facilities will go in. Bill Morris stated he is as much in favor of open space as anyone, but he knows what the law says and the Federal Fair Housing Act has superseded the city's ability to

restrict facilities of this type. He suggested commissioners table this item and refer it to staff to meet with the developers to prepare a reasonable accommodation that will meet the Fair Housing Act and will keep the city from being sued. The city does not want to change the ordinance, just make reasonable accommodation. He pointed out two issues in a decision recently handed down in federal court. The first is commercial versus residential. The fact that these facilities are a commercial business in nature is irrelevant. It does not matter to federal court. Likewise, federal courts claim they are not zoning boards, but then they turn around and rule that these facilities can go in any zone that allows a house. The second thing is how to make a reasonable accommodation for these facilities and set the number of occupants. Bill Morris reported that the developer has conducted a study, and the study will likely help determine the number of units. The developers are well prepared and know these cases and the city needs to follow the law. If citizens want to change the law, they need to lobby congress to modify the Federal Fair Housing Act. The city can regulate setbacks, landscaping, parking. Commissioner Knighton asked if there are limitations in the Federal Fair Housing act relevant to the extent of disability or other parameters for the elderly. Bill Morris stated that the recent case specifically referred to reasonable accommodations. Bill Morris stated that any loss of a major life activity is considered a disability under the Americans with Disabilities Act, and although he is not sure how that interfaces with the Fair Housing Act, he will base accommodations on that same premise.

MOTION: Commissioner Knighton motioned to table any action on amending the Land Use Ordinance and refer the residential facility for the elderly being proposed to staff to work out reasonable accommodations. Commissioner Hohosh seconded the motion and voting was unanimous.

(Visitors, Mayor Hendrix and Councilman Wilhelmsen left the meeting)

2. Open and Public Meetings Act annual training - Bill Morris

Bill Morris explained that this training is required under state law. The Open and Public Meetings Act has been around for a long time in various forms. Commissioners had information packets in front of them as he reviewed the five parts of the Public Meetings Act including: meetings, public notice, minutes and records, closed meetings, and enforcement.

(Bill Morris left the meeting)

3. Approval of Minutes of meeting held January 12, 2011.

MOTION: Commissioner Saunders motioned and Commissioner Weiss seconded to approve minutes of the planning commission meeting held January 12, 2011 as written. Voting was unanimous.

4. Public Comments.

(None)

5. City Council Report - Commissioner

Chairman Pearce reported that the city council approved the appointment of Michelle Tait to fill the vacancy created by the resignation of Darla Fowers.

6. Adjournment.

At 7:50 p.m., Commissioner Hohosh motioned and Commissioner Saunders seconded to adjourn the meeting. The next regular planning commission meeting will be held April 13, 2011, 7:00 p.m. at the city hall.

Shanna C. Edwards,
Secretary.

Jeff Pearce
Chairman