

**FAIRMONT PLANNING COMMISSION**

The regular meeting of the Fairmont Planning Commission was held on March 15, 2017 at 7:00 p.m. at the Public Safety Building located at 500 Quincy Street.

President Straight called the meeting to order at 7:00 p.m. and asked for a roll call of members.

**ROLL CALL OF MEMBERS**

**MEMBERS PRESENT**

- President Straight
- Commissioner Greene
- Commissioner Blickenstaff
- Commissioner Parker
- Commissioner Richardson
- Commissioner Majic
- Commissioner Carpenter
- Commissioner Yann
- Commissioner Colley

**MEMBERS ABSENT**

**CITY STAFF**

- City Planner** – Sandra Scaffidi
- Planning Secretary** – Maria Cipolla

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES FROM February 15, 2017**

**Commissioner Greene** motioned to approve the minutes.  
**Commissioner Richardson** seconded the motion.  
**Motion carried 9-0.**

**PUBLIC HEARING FOR March 15, 2017**

1. \*\*\*\*Tabled Item\*\*\*\* **Kirk Naternicola requests the rezoning of the Box Factory located on the 12th Street extension also known as the parcel 3-7-74.5. The applicant wishes to alter the zoning district from Neighborhood Mixed Use to Industrial.**

**President Straight** asked for a motion to take the item off the table.  
**Commissioner Parker** motioned to take the item off the table.  
**Commissioner Greene** seconded the motion.  
**Motion carries 9-0**

**President Straight asked City Planner, Sandra Scaffidi for her staff report.**

**Sandra Scaffidi:** At our last meeting, I was requested to look into the definition of a spot-zone and to see if it applies in this instant. I did speak with the City Attorney [Kevin Sansalone]. There is a memo in your packet that describes the definition of a spot-zone. For the benefit of the audience, I will read a summary of it. A spot-zone is generally defined as “the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with the Comprehensive Plan and the current zoning district or restrictions.” The creation of a spot-zone is not in and of itself an unlawful exercise of a municipality’s legislative zoning function. If the question of the spot-zone is consistent with the Comprehensive Plan and furthers the welfare of the entire municipality it is not unlawful. “Illegal spot zoning” occurs when the purpose of the rezoning or amendment is designed solely to serve the private interests of one or more landowners rather than to further a municipality’s overall zoning or Comprehensive Plan. I believe the Box Factory should not be rezoned. I do believe this would be an illegal spot-zone and would go against our Comprehensive Plan and the Beltline Master Plan. I also want to reiterate the thoughts of past planners and City Council that was determined for this area. Yes, this area was once industrial, but it is no longer. The machines and factories are

not prominent features on the landscape. There are only physical reminders but Fairmont is moving away from its industrial heritage. The existing non-conforming use out there is being phased out. This area has several facilities dedicated to education and recreation; Fairmont Middle School, the East West Stadium, Ariel Port Gymnastics, and the Twelfth Street Pool are all consistent with the Comprehensive Plan and anchors in this area. We need to continue to support the growth and development of recreation and educational activities in this area. There is a group working to connect the Industrial Heartland Trail which is huge economic driver in the area it already exists. This 1400 mile trail traverses through 4 states and 48 counties. This trail is also planned to travel through the Beltline area. Fairmont is moving away from its industrial past and needs to embrace the new economy that is at our forefront. In our last meeting, Mr. Naternicola stated that he did not believe anyone has the power to see 30 years into the future. While I agree with that to a point that is the difficult job of our planning commission; to envision what the future of Fairmont will look and construct the foundation to enable the planners and commissioners that follow us to continue to build our great city. We have a lot of great things happening in our city now, but they didn't just happen overnight. It was the foresight of the previous administrations that laid the groundwork for us to reap the benefits today. We also need to think beyond the existing network of buildings, businesses, and uses. We can't be confined by the limited thinking of what is there now, will always be there.

Mr. Naternicola has not shown how his project would benefit the City of Fairmont or the neighborhood in general. While he has apparently been working toward improving the property, recent photos appear to show that Mr. Naternicola has numerous code violations and the building has a long way to go toward creating a usable space. I am excited about the possibilities the applicant has for his future with this property, but unfortunately, I do not see how his current desire would be anything other than an illegal spot zone which would only benefit one property owner.

**President Straight** asked if there was anybody to speak in favor of this request.

**Kirk Naternicola:** The current zoning has failed in this area. It has out zoned the current businesses that are there. This building has sat vacant for over thirty years and fifteen years of it has been under the current zoning. There is nobody knocking down any doors trying to do anything with this building other than me. In my opinion, the current zoning has hurt the economic development of this area. Phasing out current businesses will only hurt the City of Fairmont. If the City was trying to pursue Neighborhood Mixed Use, why would they put the Public Works department on Minor Avenue.

**President Straight:** Is there anybody else to speak in favor of this request?  
There were none.

**President Straight:** Is there anybody to speak against this request?

**Patty Gardi:** I have brought in some pictures that the previous committee had done when they rezoned it to what it is now (the pictures were then passed around to the commissioner). I do want to say I am really happy that the City has made a line item of \$400,000.00 dollars to take care of some of the dilapidated properties in the City. It really needs cleaned up in some places. I believe that the Beltline Redevelopment Plan was part of the process to clean things up. Even if Mr. Naternicola gets his rezoning, it is not going to employ people. It is not going to be a factory. What he said at the last meeting was that his intent is storage. That is not going to employ anyone. This is near and dear to my heart because I live down there. When I look out my front window or door, that building is what I see. A redevelopment to clean things up is near and dear to my heart because I live there. I know that there are other people down there that care and want it cleaned up. I am opposed to the zoning. It is a spot zone. I would venture to guess that if you spot rezoning down there, within a year, you will have other property owners or other businesses coming before this committee and ask for a spot rezone on their business. To me, cleaning up the Beltline area has been defeated if you start having property and business owners coming in and asking for spot rezoning. You can see from the pictures that I gave you that the neighborhood is not bad. It is an old neighborhood. You have to take into consideration when those buildings and businesses were put down there; there were railroad tracks and the river. They use the river and railroad tracks to transport goods that were manufactured down there. None of those businesses exist anymore. I thank this committee for hearing me.

**President Straight:** Does anyone have any questions?  
**There were none.**

**President Straight:** At this time, I want to close the public hearing and discuss this with the Commissioners.

**Commissioner Parker:** I asked for the opinion of the City Attorney as to whether or not this request constitutes a spot zone.

**Sandra Scaffidi:** Yes. He did think it constitutes a spot zone. I don't have it in writing.

**Commissioner Parker:** That's my problem. I think the way you read your remarks earlier was that you read a definition from of some sort and it said that spot zoning was not illegal per say, meaning not every spot zone is illegal and that you had a conversation with the City Attorney, but I did not hear you say the opinion of the City Attorney is or is not a spot zoning. That is what I asked for at the last meeting was the opinion of the City Attorney, who is hired on behalf of the City to represent this commission and give us an opinion. If this goes to council, council is going to want his opinion. Why don't we do that now? My expectation was either Mr. Sansalone was going to be here and offer an opinion or issue a memo, something. I'm asking, do we have an opinion?

**Commissioner Greene:** I don't know if this constitutes a legal opinion. The last sentences of this memo says, illegal spot zoning occurs when the purpose of the rezoning or amendment is designed solely to serve the private interests of one or more landowners rather than to further a municipality's overall zoning or Comprehensive Plan. The latter has been consistently held to constitute "an arbitrary and capricious exercise of legislative power." This is sort of his opinion.

**President Straight:** This did come from the City Attorney.

**Commissioner Parker:** That doesn't say what his opinion is. You have given us a definition. That's not what I asked for, I'm sorry. I asked for the opinion of the City Attorney. Now, we are left trying to interpret this one piece of paper. I appreciate that. I think it is open to debate whether or not this is an illegal spot zoning. I am disappointed that we don't have an opinion from the City Attorney about whether this particular situation constitutes or does not constitute illegal zoning. I will place those comments on the record.

**Sandra Scaffidi:** I appreciate that and I am sorry that I did not get that in writing.

**Commissioner Carpenter:** So, I have a question. Is spot zoning is not illegal?

**Sandra Scaffidi:** In of itself, no.

**Commissioner Carpenter:** So we can spot zone. You are just saying, this not where to do it.

**Sandra Scaffidi:** It is my understanding that if it furthers the municipality's Comprehensive Plan, laid out legal in documents and it doesn't interfere with the Comprehensive Plan. You can't put two incompatible uses together. For example, you can't put a major factory in the middle of a residential section because they are not compatible with each other. What I understand this to say is that according to the definition that Mr. Sansalone has given us, we need to show how it will further our Comprehensive Plan and our vision for this area that has already been approved by previous administration.

**Commissioner Yann:** Several years ago in my neighborhood, they applied for a spot zoning. We knew exactly what was coming. It was defeated. In this case, I see the problem some people have with no knowledge of what is going in there. It is a spot zone and we have no idea of what might be there.

**President Straight:** Any other questions or comments?

**Commissioner Blickenstaff:** We don't know what might be there, but we do know what has been there for more than 30 years. It has become a dilapidated building. I commend Mr. Naternicola for at least buying it and looking for something to do with it other than the view that is there now. Everything that touches around it is a business. I understand they have been grandfathered in prior to this but I don't expect them to be going anywhere, at least I don't.

**Sandra Scaffidi:** But they could.

**Commissioner Blickenstaff:** Yes. They could.

**Sandra Scaffidi:** Once they do leave, the use mostly won't be transferred.

**Commissioner Blickenstaff:** I guess they could, which would reinvigorate the area with the use that was laid out in the plan, but if they do leave, especially with Republic Services and Valley Distributing paying taxes to the City, I am in favor that they don't leave. There really isn't anything else in that area once you get off Chamberlain. Everything that touches the Box Factory is a business at this point.

**Commissioner Greene:** Did we get any comments during the most recent round of Comprehensive Plan meetings with regard to this area.

**Sandra Scaffidi:** Not specifically to that area. We did hold a meeting at West Fairmont Middle School. We had a few people show up; not many. A lot of people that did attend our Comprehensive Plan meeting, and we heard the same thing over and over. There is a need for recreational activities; sidewalks, safe routes to schools. There was not any specific to that neighborhood for a larger vision from our meetings. There was a general sense from all the meetings that there was desire for additional recreational opportunities throughout the City of Fairmont.

**Commissioner Colley:** You have to appreciate the guy for wanting to do something with the building. If nothing goes on there, it is just going to sit there as an empty building next to a school zone. I would rather see someone doing something with it then it being empty and just sitting there; me personally, but rules are rules. But if you want to talk about a sense of trying make something look better, sometimes you have to break the rules. I'm not encouraging it that we should break rules, I'm just saying in general that I would personally like to see something done with the building than it just sit there empty and doing nothing.

**Commissioner Greene:** I think what both of you have said (Commissioners Blickenstaff and Colley), is essentially what is on my mind. You drive around down there and we know what the Comprehensive Plan says; we know how it is zoned; but when you drive around down there and see Public Works from the City, the trash company, the bus barn, and Judd's storage down there, most of what is down there is industrial. So what's happening there, strikes me as industrial. In addition, a lot of that property is not doing anything now or anytime soon. If you drop me on that part of the planet, I would look around and I would say Industrial. That is what's happening here but it is not zoned that way. Where I am struggling is, I am not sure I can vote in favor of Mr. Naternicola's request because our Planning and Zoning regulations allow a change like this because it is inconsistent with the Comprehensive Plan. This makes me focus back on the Comprehensive Plan and ask the question 'does the Comprehensive Plan acknowledge what you just said?' Is the Comprehensive Plan really addressing our needs? I don't mean to sound nitpicky but there is nobody down there that needs a save route to school. There is no need for that down by the Box Factory. I would love to use the rail trail. I would love to be able to get on my bike and ride clear to Pittsburgh or wherever the trail goes past Morgantown. But, I don't know if we want to wait another 15 years and not do anything. That is all I have. It didn't resolve anything.

**President Straight:** I respect everybody's view, but it has not been shown what they want to put in this place. I know it has sat for thirty plus years, but I have talked to a lot of developers and there are a lot of ideas that you (Mr. Naternicola) can do; maybe not what you want to do, but a lot of things that are recreational can be put in there. Have you talked to Omni Architects since they offered their expertise?

**Kirk Naternicola:** I have talked to MCPARC. The building cannot be a recreational building. It is 200,000 square feet. It is a solid concrete shell. If you put apartments in there, look at what is besides the building. It is not going to be safe. There are options to do that if somebody wants to dump 10 to 15 million into it but I don't think that is feasible. Omni can do a drawing and make it look nice for me. You guys get on me. For the size of it, I can put fifty different businesses in there. It is a big building. I need to be able to make money in order to fix it up. I don't know if that answers your question or not. There are a lot of options I can do with it. My most feasible one would be industrial. I can make it warehousing; make it open for lease to other companies. I can only do so much. I drove around the City. There are a lot of vacant buildings. NASA has three of them in NASA Park. They are 15 million plus. They are brand new buildings that are vacant. Fairmont has it tough. Can we be picky with what types of businesses we want and need? Our population is only going to get smaller. I want to put it up for lease with a commercial real estate site so that we can get

companies from out of state that possibly can do something with the building. If it is not zoned industrial, than they will come to me saying it is not zoned right. I don't know.

**President Straight:** Any other questions or comments, gentlemen?

**Commissioner Carpenter:** I would like to say my job, as a code enforcement officer with the City of Fairmont, is to make sure these dilapidated buildings get taken care of one way or another. If Mr. Naternicola is willing to clean it up, we are ahead of the game. If the City ends up with this building, it would take anywhere from ½ million to a million dollars to remove this structure. This is what I deal with every day. In my opinion, I would rather see somebody do something than let it sit for another thirty years.

**Sandra Scaffidi:** In response, of course we want to see Mr. Naternicola be able to have a successful business and the building fixed up. We also have to think about the ramifications for this particular piece of property regardless of whose property it is. Just think about the effect it might have on future decisions either in this area or city wide. I am not sure it does represent the best interest of the City or the Comprehensive Plan. If people want to see the zoning changed in this area, Jamie is right; the way you do that is through a change in the Comprehensive Plan, which is what we are going through now so there are opportunities, but I am not sure this is the right venue.

**President Straight:** Any other questions?

**Commissioner Carpenter:** If this came to the Comprehensive Plan for a change and all these people came in from that area, what do you think they would want to be zoned? We have Republic. We have Valley Distributors. We have the Box Factory. We have the storage down there.

**Sandra Scaffidi:** We have a lot of residential. We have the school.

**Commissioner Carpenter:** You can change everything from Minor Avenue down. It is all an industrial area. That's how I look at it. It has always been industrial. It still is industrial.

**President Straight:** We have a Comprehensive Plan now. I don't think we need to deviate one way or another from it. I would like to know specifically what he wants to do with it.

**Commissioner Carpenter:** I agree.

**President Straight:** For us to change this in the middle of updating it [Comprehensive Plan], I don't think it would help us. Later on if we want to change that part of the Comprehensive Plan, than that is something we can do. I agree with you. There are a ton of buildings that the City is looking at. I think the City of Fairmont has stepped up to the plate and has started cleaning up some of these properties. I have talked to a few people like MCPARC. I think you (Mr. Naternicola) should go and speak to them. They have great ideas for that place. It won't cost you a bit of money. The first thing they brought up was drone races that they have. I wouldn't be sitting on something. I would be out initiating something. I know Jay Rogers, at one of the prior meetings, invited you down to meet with him. That is what I would do. Go down and see what options you have. It is free.

**Kirk Naternicola:** He did mention something about the drone racing. I totally forgot about that.

**President Straight:** Any other comments from the Board?  
**There were none.**

**President Straight:** I need a motion to either adopt or to defeat.

**Commissioner Majic:** I motioned to approve the request

**Commissioner Blickenstaff:** I seconded the motion.

**President Straight:** I need a roll call vote, please (**Maria Cipolla**). This is to approve Gentlemen.

**Commissioner Parker:** I am constrained to vote against because we don't have an opinion from the City Attorney on the spot zoning nature. Without that, I am concerned that we might be approving illegal spot zoning. For that reason, I think it is the appropriate thing to do. I support carefully looking at rezoning it when the time comes up to make it consistent with the venues that are there and will likely be there for years. But because of those facts, I vote no.

**Commissioner Richardson:** Yes.

**Commissioner Carpenter:** Yes.

**Commissioner Yann:** No.

**Commissioner Greene:** No.

**Commissioner Majic:** Yes.

**Commissioner Blickenstaff:** Yes.

**Commissioner Colley:** Yes.

**President Straight:** No.

**Motion carried 5-4 in favor of approve the rezone request.**

**President Straight:** This will go to City Council for their vote next.

**Kirk Naternicola:** Do I need to go and speak in front of them?

**Maria Cipolla:** Yes.

#### **PUBLIC HEARING TO SET FOR April 19, 2017**

- 1. Duane & Matine Cole is requesting the abandonment of a right-of-way located at the end of Union Street where it ends.**

**Sandra Scaffidi:** This applicant currently owns the property on both sides of the road that is being requested for abandonment. The corner of Union Street appears to be rarely utilized outside of the applicant. His application appears to be in order. I recommend the Commission place this request on their agenda for their April meeting.

**President Straight:** I need a motion to set this for a public hearing on April 19, 2017.

**Commissioner Parker** motioned to set for a public hearing.

**Commissioner Richardson** seconded the motion.

**Motion carried 9-0.**

#### **NEW BUSINESS**

None

#### **CITIZENS PETITION**

None

#### **OTHER BUSINESS**

- 1. Commissioners Comments:**

**Commission Parker:** I hope that Ms. Scaffidi took no offense to any of the things that I said. They were not directed at you personally. I have asked before for an opinion from the City Attorney and we haven't always received a reply so I have some level of frustration about that. I think it would have been very helpful to have that tonight. Now that it is going to City Council, I am sure they will receive an opinion and they will act accordingly with the law and the facts presented here to tonight. I have every confidence in that so we will let it go to the next step. I just want to make sure my comments were not misconstrued.

**Sandra Scaffidi:** I appreciate that. Thank you. I am learning, thanks.

**Commissioner Richardson:** This is a work-in-process for me. I learned something tonight from Mr. Parker that I didn't know that we can do in the future. I also learned something for Mr. Carpenter. Things can stay the same and we wish they would change, but we will deal with it as we proceed.

**Commissioner Carpenter: No Comment.**

**Commissioner Yann:** There were a lot of comments about things staying the same. Things aren't staying the same. Not all things are visible in the City, but there are a lot of things moving forward. We would have never thought there would \$400,000 dollars to start tearing down some of the dilapidated building in the City. There is movement being made. It may be slow, but it is not going to be thirty years. Under this administration, we are trying.

**Commissioner Majic: No Comment.**

**Commissioner Blickenstaff: No Comment.**

**Commissioner Colley:** Sometimes I speak from the heart. Please excuse me. I am learning a lot of things from all of you tonight. I just want to see things get better for Fairmont.

**Commissioner Greene:** I appreciate Mr. & Mrs. Doerfler, as well as Mrs. Gardi for coming to the meeting tonight. I wish more people would come to these meetings and provide us with their feedback. It is helpful.

## **2. Staff Updates:**

**Sandra Scaffidi:** I want to thank the Commissioners for their dedication to this process. I realize we do not make easy decisions, but I am thankful for your foresight. I think it makes for a better Commission even when we disagree. Our Comprehensive Plan is moving slowly, but it is moving forward. Our consultants are hosting meetings again with stakeholders on March 31st. They are trying to incorporate economic development strategies with our plan and that is taking a little longer than expected. I do think we will have a great report when it is complete. I also want to apologize for last week's meeting. There was a miscommunication in the letter we had mailed out to Bill Oliver which in hindsight wasn't as clear as it should have been. We have reached out to Bill to apologize, but I also want to apologize to the Commission. I accept for responsibility for it.

## **ADJOURNMENT**

**President Straight** asked for a motion to adjourn.

**Commissioner Parker** made a motion to adjourn.

**Commissioner Richardson** seconded the motion.

**Motion carried 9-0**