

**MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION  
MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Monday, February 23, 2004**

Members present were Larry Greenwell, Vice Chair; Lawrence Chase, Julie King and Steve Reeves. LUGM staff present were Denis Canavan, Director; Jeffrey Jackman, Senior Planner; Phil Shire, Planner IV; Yvonne Chaillet, Planner III, Sue Veith, Environmental Planner; Trish Guy, Planner II; Chad Holdsworth, Planner II, Bob Bowles, Planner I and Janice C. Blackistone, Fiscal Specialist (backup for Recording Secretary). County Attorney Heidi Dudderar, Elaine Kramer, Director of the Department of Finance and George Erichsen, Director of the Department of Public Works & Transportation, Phil Rollins, Recreation & Parks, Brad Clements, Board of Education, Donna Sasser and Robin Finnacom, DECD, were also present.

A list of attendees is on file in LUGM. The Chair called the meeting to order at 6:30 p.m.

**APPROVAL OF MINUTES** - The minutes of February 9, 2004 were approved as recorded.

**PUBLIC HEARING**

Open public testimony to consider an amendment of Chapters 20, 60 and 70 to the St. Mary's County Comprehensive Zoning Ordinance (Ordinance) 02-01 for the purpose of improving the review process for major subdivision and major site plans as it relates to adequate public facilities. Adequate public facilities is already required in the Ordinance but this amendment is to improve and to clarify existing regulations. If adopted, this amendment will require adequate public facilities assessments and determination of compliance shall be made at the preliminary subdivision plan approval or at final site plan approval, if the property is not subject to subdivision regulations.

Mr. Canavan stated staff has had the opportunity to correct text errors such as misspellings and redundancies that were discovered after the Zoning Ordinance was adopted. He said these corrections are not substantive; they are for clarification purposes only. Mr. Canavan said the Board of County Commissioners (BCC) will see the amendments February 24, 2004 and they would like the Board's recommendation.

Legal Ad published in The Enterprise on 2/11/04 and 2/18/04  
#S-A St. Mary's County Zoning Ordinance – Article 2.

Mr. Canavan stated the changes are as follows:

- 1) Page 20-2, Figure 20.1:

- a) Under the “Action” column, change “Administrative Adjustments” to “Administrative Decisions” in block 7.
  - b) Under the “Final Decision-Maker” column, change “Planning Commission” to “Planning Commission/Planning Director” in block 5, and change “Historic Preservation Commission Staff” to “Planning Director” in block 8.
- 2) Page 20-2, first line in paragraph at bottom of page, change “test” to “text”. Paragraph should read:  
“This diagram is intended as a guide only. It is necessary to consult the text of this Ordinance for specific procedures and regulations pertaining to the decision-making process and responsibilities and for the method of filing and perfecting appeals of decisions made pursuant to this Ordinance.” Delete the second sentence of this paragraph, which is redundant.
  - 3) Page 20-3, Figure 20.1.a: Delete the eighth row of blocks pertaining to the Lexington Park Master Plan. This is covered under “Small Area Master Plans.” This is unnecessary because Lexington Park Master Plan is a small area plan.
  - 4) Page 60-3, Line 6: Change “minor” to “major”. Sentence should read, after amendment: “For all non-residential and multifamily residential projects that require major site plan approval, a concept site plan shall first be approved by the Planning Commission before the major site plan may be processed for approval by the Planning Director.
  - 5) Page 60-3, change line 15 to read “May be served by adequate public facilities at the time prescribed by Section 70.2.2 and as required in Section 70.2.2;”
  - 6) Page 60-6, 2<sup>nd</sup> sentence of line 24 should read: “Final approval of a major or minor site plan submitted under the provisions of this chapter shall expire one year after the date of such approval unless building permits have been obtained for construction in accordance therewith.”
  - 7) Page 70-2, line 20, and revise “Effect of Determination” to read: “A determination that public facilities are adequate shall apply to the proposed development and shall not be modified through final subdivision plat approval.”

8) Page 70-2, under Section 70.2. Applicability: add a new number 6 as follows:

6. **Expiration of Adequate Public Facilities.** All findings of adequacy for roads, sewerage, water, fire suppression water supply, storm drainage, and schools shall expire with the expiration of the final approval of the major site plan, pursuant to Section 60.8.1 of Zoning Ordinance Z #02-01, and with the expiration of the approval of the preliminary plan for major subdivisions, pursuant to Section 30.5.4 of Subdivision Ordinance #02-02.

9) Page 70-11, line 5, revise paragraph "c" to read: The development proposal is for phased construction, for which adequate capacity is projected to be available, pursuant to school enrollment projections for the schools within the zone serving the proposed development.

The Board asked when are adequate public facilities actually determined. Mr. Canavan stated for the Board it would be at the preliminary subdivision plan and for a site plan it is determined at the final site plan by the Director.

Clare Whitbeck, Leonardtown Maryland, stated she would like to congratulate Mr. Canavan for publicly doing what was needed to be done to the Ordinance in compliance with normal standards of processes; the changes are excellent. Ms. Whitbeck further stated her concerns about solid waste plan should not go to Technical Evaluation Committee (TEC) but when it is received it should be received by Department of Public Works and Transportation (DPW&T). Ms. Whitbeck suggests the changed should be made on Page 20-2 (Exhibit A), that either an asterisk or number 1 or letter or some indication should be made on the third box down that says Concept Site Plan should state Solid Waste Facilities should first be referred to DPW&T in accordance with the Comprehensive Solid Waste and Recycling Plan.

Ms Whitbeck further suggests on Page 60-6, Line 25 should read:

1) **Expiration.** Concept site plan approval shall expire one year after the date of such approval unless final site plan approval has been obtained. Final approval of a major or minor site plan submitted under the provisions of this chapter shall not be complete until publish in the newspaper of general circulation and shall expire one year after the date of such approval unless building permits have been obtained for construction in accordance therewith.

Ms. Whitbeck stated the reason for putting this in the newspaper is to give the applicant or someone who wishes to appeal the Planning Director's decision, a 30 day notice. However, it is very difficult to determine when this decision has been made in the Land Use & Growth Management's (LUGM) office. She said currently Mr. Canavan has agreed to publish his decisions in the newspaper but there is no requirement in the Ordinance to continue doing so and if a new Planning Director comes into LUGM office that is to say this would continue. This would give the property owner, developer and the public equal time to do what they would need to do.

Mr. Canavan, in response to Ms. Whitbeck requests, stated the suggested added amendment to include words relevant to Solid Waste Management Plan, was: 1) beyond the scope of this text amendments and 2) if you look at the flow chart on Page 2-3, left column, third block down, it is titled Solid Waste Plan.

Ms. Whitbeck responded to Mr. Canavan's statement that the problem of Solid Waste Facility is that not who does the plan but what it does not do is to notify somebody who picks up and reading the Ordinance; and they are not familiar with our procedures in St. Mary's County and if they have a Solid Waste Facility that they would follow a different procedure. It is not suppose to be submitted to LUGM until after it has been found in conformance with the Solid Waste Plan.

Mr. Canavan stated on Ms. Whitbeck's second issue as to when the appeal starts, the suggestion is the appeal time starts, notification of the start date is published in the newspaper. He applauds the idea of good communication of decisions. He does not know any other jurisdiction that allows appeal to start from adequate notice to property owners or notices put in a public newspaper. He believes it should always be from the date of the decision. LUGM does their best to get the notices in the local newspaper the following week of actions taken by LUGM. Mr. Canavan said he does not recommend this should change.

Ms. Whitbeck stated in order to know whether a decision has been done at the LUGM office, you would need to call Mr. Canavan and talk with him. This makes it very difficult for the public to know when the 30 days starts and to have the opportunity of the full 30 days.

The Board asked Mr. Canavan about Ms. Whitbeck's requests of the publications of the decisions made from LUGM. Mr. Canavan replied it is very fortunate working with the newspaper, at no expense to the County, reporting all actions by the LUGM department in the previous week. This is an added effort to communicate with the public. He is taking full advantage of whatever publications are available but to make it a requirement to always advertise is not a good idea, you would be relying on a private industry to publish

the decisions. He stated if you are interested enough in a subdivision and/or a decision on a site plan, then there is plenty of opportunity to be involved and be part of our record and follow what is going on. He further stated he does not believe any decision is taking that amount of time that you as an interested citizen can not call the LUGM office to see what the status is; LUGM receives those calls all the time.

Vice Chair asked if there were any more comments.

Mr. Canavan read a letter from Dugan & McKissick, William McKissick that is relevant to the text amendments. On the second page of this letter, Mr. McKissick is suggesting it would be more appropriate to simply remove Section 60.5.3.b of the Ordinance as criteria for a concept site plan approval. Mr. Canavan stated going back to the text amendment that LUGM is suggesting changing the word "will" to "may" and Mr. McKissick feels there is some ambiguity. Mr. Canavan said he thinks overall it is beneficial to retain the provision and he does not have any reason to delete the provision at this time.

The Vice Chair closed public hearing.

**Ms. King moved to send recommendation to the Board of County Commissioners the proposed amendment for Chapter 20, 60 and 70 for the purpose of improving the review process for major subdivisions and major site plans as it relates to the determination of adequate public facilities and that the determination of compliance is at preliminary subdivision plan approval or at final site plan approval if the property is not subject to subdivision regulations. The motion was seconded by Mr. Chase, passed by a vote of 4-0.**

## **DEVELOPMENT REVIEW**

### **PSUB #03-120-008 – DELIBERA SUBDIVISION**

Requesting preliminary approval of a 15-lot major subdivision. The property contains 49.10 acres, is zoned RPD, and is located on the north side of Frischholz Court at the intersection with Mechanicsville Road; Tax Map 12, Block 22, Parcel 49.

Owner: Steven Valentine, Trustee of Bumpy Oak Corporation Pension Plan

Present: James Erdman, Ben Dyer Associates, Inc.  
Joseph Densford, Attorney

Mr. Shire said there were no outstanding issues pertaining to this preliminary subdivision plan approval for 15 lots. There was an administrative hearing to amend the CWSP held at LUGM on October 14, 2003 and Maryland Department of the Environment approved the RW category on January 12, 2004.

Mr. Shire stated the 49 acres of this site would allow 9 lots by rights at the RPD zoning 5 acre density and the applicant is proposing 6 additional lots through the use of Transfer Development Rights (TDRs) for a total of 15 lots. Mr. Shire further stated the applicant is proposing to connect 13 of these lots to the existing County Lakes central water system. He said lots 14 and 15 will be served by their own private wells because of their remote location on the tract (separation by steep slopes) precludes connection.

Mr. Shire said the impacted County road will be Mechanicsville Road, a major collector. The level of service on Mechanicsville Road is sufficient to serve these additional 15 lots. However, there is an existing problem at the intersection of Mechanicsville Road and Route 5 north bound (left turn movement onto north bound Route 5) which operates at level of service F. This intersection is 3 ½ miles from the propose site. The applicant has proposed to mitigate this situation with a special impact fee in the amount of \$1,000 per lot towards some future improvements at the intersection of Mechanicsville Road and Route 5.

James Erdman, from Ben Dyer Associates, Inc., stated there were a couple of issues he wants to go over with the Board. The first issue is they are providing the public water and this extends to Frischholz Court, the adjacent subdivision. Mr. Erdman said they are clustering on less than 50% of site as the Ordinance requires.

Vice Chair asked Mr. Erdman if lots 14 and 15 would be served by the private wells. Mr. Erdman responded this is correct; because of the terrain they have requested for those lots to be on well only and all the other lots would be public water.

The Board questioned where did the mention of the TDRs ownership come in the proposed motion. Mr. Shire responded if you read under Analysis, A.1: The proposed single residential use and density is consistent and compatible with RPD zoning with the use of 12 TDRs in accordance with the requirements of Chapter 26 of the Ordinance. The average lot size and layout is consistent with development on adjacent properties which are fully developed. Mr. Erdman stated there is an executed agreement for all of the TDRs.

Charles Guiliano, 37734 Frischholz Court in Mechanicsville, stated his concern is there are no shoulders on Mechanicsville Road and with the Amish coming down the road this would cause traffic problems. His other concern is putting the community on public water but this is community well; it comes from the same aquifer as Frischholz Court. Mr. Guiliano stated that since October 13, 2003 they already lost another well, including Mr. & Mrs. Alexander and another neighbor down the street. He is concerned what the future plans would be on the impact the water system. He also stated his concern regarding the traffic and he would like to see the Board address those issues.

David Alexander, 37766 Frischholz Court in Mechanicsville, stated the water run off on this property is terrible, it is completely a swamp. There is a protected watershed to the north behind his house. He said he is concerned that the same aquifer that he uses, will be used for this subdivision. He stated that since October 13, 2003, he has lost his well. He said he was told by Patuxent Pump & Well, Inc., that the water level has dropped 129 feet since 1996. He said Mr. Erdman stated they were going off the County Lakes water supply, but would that include his development. He stated he is concerned what would happen in 5 years, who will pay for the impact when their wells go bad again. He said his other concern is the traffic; there are no breakdown lanes on Mechanicsville Road.

Daniel Gross, 37707 Frischholz Court, stated his concerns regarding the number of homes that will have access from their road. He further stated he is concerned this subdivision will become tied into Country Lakes directly.

Kevin Keys, 37751 Frischholz Court, stated his concerns regarding the increase in traffic. He is concerned with the safety of the children that live on this court already. He questioned the size and value of the homes; if these homes are starter homes then there will be more people moving in and out all the time. He said he is concerned about the existing aquifer and water supply problems.

Joe Densford, Attorney for the applicant, stated he would like to clarify some the questions that have been asked, he said the applicant was commended by LUGM for tying into the central water system at County Lakes. He said the well is about ½ mile away; it will have less impact on adjoining wells then to let the 13 lots have their own individual wells. He stated the issue regarding the water for these lots has been addressed at a public hearing and the water amendment was approved by the Maryland Department of Environment. He further stated the issues regarding the road system, the developer proffered a fee for future improvements to the intersection at Route 5.

James Erdman said he spoke with Mr. Alexander and the applicant agrees to push the house as far away as possible from Mr. Alexander's lot. He said all driveways will be paved.

Mr. Shire asked Mr. Erdman based on the perc test location for lot 13, is it possible to work with the Health Department to reconfigure the 10,000 foot easement away from the property line? Mr. Erdman answered yes, they could build the house site and septic over to the north.

The Vice Chair asked Tom Russell, METCOM, about the water level dropping 129 feet since 1996. Mr. Russell said he has not seen any of the

well reports, and he did request a report today but did not receive it thus far. He could tell the Board that the Maryland Geological Survey's reports, the average drop are about 5 feet per year. He is not aware if the original report is correct and he is not aware of any water drop in St. Mary's County that was 129 feet.

**Mr. Reeves moved that, having made findings pursuant to Section 30.5.5 of the Subdivision Ordinance; i.e., Criteria for Approval of a Preliminary Plan, the Commission granted preliminary subdivision approval, conditioned upon proof of TDR ownership as a prerequisite to final subdivision, including adequate public facilities as described in the Director's Report and as stated as follows:**

- 1. The proposed single residential use and density is consistent and compatible with RPD zoning with the use of 12 transferable development rights (TDRs) in accordance with the requirements of Chapter 26 of the Zoning Ordinance. The average lot size and layout is consistent with development on adjacent properties which are fully developed.**
- 2. Existing Frischholz Court (a public road currently serving 14 lots) will provide access for these 15 proposed lots to Mechanicsville Road. This meets current Subdivision Ordinance requirements for the maximum number of lots served by a single access point.**
- 3. The appropriate findings have been made based on the information submitted in the Director's Report. Although connection to community water is not required unless 25 lots are proposed, the applicant is proposing to connect 13 of these lots to the existing Country Lakes central water system. Lots 14 and 15 will be served by their own private wells because their remote location on the tract (separation by steep slopes) precludes connection.**
- 4. Since all adjacent properties are developed, no additional access to adjacent properties (other than that provided by the use of Frischholz Court) is appropriate. Mechanicsville Road itself will continue to operate at an acceptable level of service, but the intersection at Maryland Route 5 (northbound turn) is failing. Pursuant to Section 70.6.3 of the Zoning Ordinance, the applicant proposes to contribute special fees-in lieu of improvement (one-thousand dollars per lot) to mitigate the failing intersection. These fees will be applied to future improvements at that intersection.**
- 5. Proper drainage and erosion control will be assured through review by and final approvals from the appropriate TEC agencies.**
- 6. The requirement to cluster the lots on 50 percent or more of the tract has been met. Approximately 60 percent of the site**

has been proposed as common open space. In addition, design criteria such as the use of shared, private drives, and open road sections are in keeping with Section 30.13.1 of the Subdivision Ordinance.

The motion was seconded by Mr. Chase, passed by a vote 4-0.

### **GROWTH ALLOCATION PUBLIC HEARING**

#### **PSUB #03-120-023 – ST. JEROME'S BRANCH**

Requesting Growth Allocation approval to convert 14.3074 acres from RCA to LDA

to create 10 single-family lots in the Critical Area. The property contains 73.21 acres

in total, is zoned RPD (RCA Overlay), and is located on the north side of Fresh Pond

Neck Road, approximately 2,000 feet east of its intersection with MD Route 5; Tax

Map 71, Block 10, Parcel 247.

Owner: Millison Development, Inc.

Present: Sue Veith, Environmental Planner, LUGM

Gene Kopp, of Millison Development, Inc.

Dan Ichniowski, of NG&O Engineering, Inc., Agent for

applicant

Ms. Veith reviewed applicant's request for a hearing and recommendation from the Planning Commission to the Board of County Commissioners for award of growth allocation to change the Critical Area zoning overlay from Resource Conservation Area (RCA) to Limited Development Area (LDA) on subject property. The Planning Commission opened and closed the hearing on February 9, 2004; but left the record open for 10 days, during which period comments were received. The February 23, 2004 Staff Report addresses the issues that were raised by these comments as follows: 1) Consistency in Land Use Plan, 2) Environmentally fragile nature of subject property, 3) Stormwater Management and flooding, 4) Boat ramp and pier, 5) Perc test status and 6) Acreage to be deducted.

Ms. Veith cited a February 23, 2004 letter from the Critical Area Commission requesting that the area north of Creek View Drive and adjacent to Lot 10, totaling approximately 4.1 acres of connecting open space be included in the amount of acreage that would be deducted from the growth allocation.

**Ms. King moved that, having made findings that the request is consistent with the Comprehensive Plan and with the requirements for growth allocation found in the Comprehensive Zoning Ordinance § 41.9.1., the Commission hereby sends recommendation to the Board of County Commissioners as follows: 1) that the Board accept the findings of staff and the Planning Commission as to the consistency of the request with the**

County Comprehensive Plan and related ordinances, 2) that the Board award the growth allocation as requested, changing from RCA to LDA the zoning overlay on subject property and 3) that the Board forward to the Critical Area Commission a Notice of Intent to award 18.6214 acres of the County's growth allocation for the development envelope as defined in the plans submitted on December 12, 2003 for the property known as Tax Map 71, Block 20, Parcel 247, with the following conditions:

1. No further subdivision of the areas of the parcel (54.1679 acres) outside the development envelope is allowed. Plat notes and a deed restriction to this effect shall be recorded at the time of final subdivision approval.
2. The 300-foot expanded Critical Area Buffer shall be allowed to regenerate as natural forest. No mowing or other vegetation management, except as recommended by the St. Mary's forester to assure growth of forest vegetation and approved by the Department of Land Use and Growth Management, shall be allowed within the expanded Critical Area Buffer. This regeneration of forest in the Buffer shall not relieve the requirement for afforestation on each of the lots. Afforestation will be required at the time of permitting of development on each lot to assure minimum fifteen percent forest cover is provided on the individual lots. Clearing of any existing forest shall be mitigated in accordance with the Comprehensive Zoning Ordinance.
3. The wetland/stream crossing and buffer impacts required to access the development from Fresh Pond Neck Road (which may be allowed in accordance with Comprehensive Zoning Ordinance §71.3.2.a.) shall be subject to the requirements of tidal and or non-tidal wetland permits as required by the Maryland Departments of the Environment and Natural Resources. Any required permits (or agency letter indicating no permit is required) must be obtained and copies provided to the Department of Land Use and Growth Management and a variance issued by the St. Mary's County Board of Appeals for the buffer encroachment and Buffer clearing required for the road and its construction prior to final subdivision approval by the Planning Commission.
4. All TEC comments shall be addresses and all ordinance provisions (including those for adequate public facilities) for subdivision approval shall be met prior to final subdivision approval by the Planning Commission. All ordinance criteria for development review and approval shall be met prior to issuance of grading, environmental, or building permits.
5. The applicant shall work with the Department of Public Works and Transportation to evaluate and provide a ditching and

**storm water management plan for the subdivision access road to provide an approved outlet for the standing water in the ditches in the vicinity of the new road's intersection with Fresh Pond Neck Road.**

- 6. The applicant shall provide for approval by the Planning Commission at subdivision approval a plan and binding covenants specifying the configuration of the community ramp and pier facilities, defining hours of access and use by the residents, establishing rules for parking and storage of watercraft, and providing for long term maintenance of the facility.**
- 7. The Critical Area Commission staff shall verify in writing and the County shall adjust if necessary the acreage required to be deducted if growth allocation is awarded. This determination and adjustment shall be made prior to scheduling a hearing before the Board of County Commissioners for consideration of this growth allocation request.**

**The motion was seconded by Mr. Chase, passed by a vote 4-0.**

## **DISCUSSION/PRESENTATION**

### **FY 2005 – FY 2010 – CAPITAL IMPROVEMENT PROGRAM**

Mr. Jackman said the proposed capital projects were reviewed by staff and staff approves all proposed projects. Mr. Jackman stated that staff recommends the Commission to forward their recommendation to adopt the FY 2005 – FY 2010 Capital Improvements Program to the BCC.

Elaine Kramer, Director of Finance, said the BCC has spent a good deal of time in the last several months reviewing the Capital Plan for FY 2005 through FY 2010. The BCC has set a target in terms of bond financing for projects to be approximately \$7.8 million annually over a course for the next 5 – 6 years. This would correspond closely but not exactly to the amount of the principal of repayments of the bonds. This will hopefully get control of the debt to a declining status. Ms. Kramer said this program does more than that, the average amount needed is less than the \$7.8 million and this will provide us flexibility.

The Board asked how would this be different from the soil survey that is down for every County. George Erichsen answered this has been coordinated with LUGM and DPW&T has not been involved. Mr. Erichsen said DPW&T has recently been involved in some funding. He further stated it is more detailed than the work Maryland Geological Survey does and he does not think the limits of the soil have been identified. He said this project is to defend the limits of the soil types that existed now by doing some additional testing.

The Board asked about the Detention Center, could some ducting work be done to bring air or ventilation into that building. Mr. Erichsen replied that the Detention Center ventilation is in the current fiscal year.

**Mr. Chase moved that, the Commission voted to recommend to the Board of County Commissioners the adoption of the FY 2005 through FY 2010 Capital Improvements Program. The motion was seconded by Mr. Reeves, passed by a vote 4-0.**

**RESOLUTION**

**Resolution – Amending Chapter 20 – Authority of Reviewing/Decision Making Bodies and Officials, 60, Site Plan Review, and 70, Adequate Public Facilities.**

**ADJOURNMENT** – 9:03 p.m.

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Janice C. Blackistone  
Fiscal Specialist

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Approved in open  
session: March 8, 2004

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John F. Taylor  
Chairperson