

MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Tuesday, October 13, 2009

Members present were Steven Reeves, Chairman; Brandon Hayden, Shelby Guazzo, Susan McNeill, Merl Evans, and Martin Siebert. Lawrence Chase was excused. Department of Land Use & Growth Management (LUGM) staff present were Bob Bowles, Planner IV; Dave Chapman, Capital Improvement Planner; Yvonne Chaillet, Zoning Administrator; Dave Berry, Planner II; and Jada Stuckert, Recording Secretary. Deputy County Attorney David Weiskopf was also present.

The Chair called the meeting to order at 6:30 p.m.

APPROVAL OF THE MINUTES – The minutes of September 28, 2009 were approved as presented.

ANNOUNCEMENT

Mr. Berlage stated the Planning Commission will have an opportunity to comment on the County's Capital Improvement Plan at the October 26, 2009 meeting.

DECISION

CWSP #08-200-003 Mill Cove Manor

Mr. Reeves made the following statement for the record:

"Concerning Mill Cove Harbor and Mill Cove Manor discrepancies the applicant has expressed concern relating to an inappropriate communication between planning commission members and members of the community regarding the merits of the application.

For the record: On Monday, March 23, 2009, I was on jury duty for the St. Mary's County Circuit Court. It is the policy of the county that neither sharp objects nor cellular phones are permitted in the courthouse. I left my phone in my car.

During the lunch recess, I returned to my car and discovered a missed, unidentified cell phone call, which upon returning was from a Mr. Brookes Jackson. I returned the call and discussed with Mr. Jackson his request to present an outlook presentation at the planning commission meeting that evening. Mr. Jackson said that he had made this request at Land Use and Growth Management, but was told that the public hearing portion of the application had closed. His reason for asking permission from me was that his presentation required time to prepare and without my permission to speak, his efforts would be unwarranted. I had neither notes nor minutes to rely upon, and initially gave him permission to speak. I then proceeded to lunch.

While eating my lunch, I reconsidered this decision and returned another call to Mr. Jackson. I explained to him that this matter needed to move forward, and because the record is closed, I must deny his request to make his presentation. Mr. Jackson was disappointed but said that he understood. As a consolation, I then said to Mr. Jackson that based upon the presentations so far, I personally was not inclined to vote for this application. Mr. Jackson's reply was that they had hoped for two opposing votes. My final comment to him was that I had not communicated with any other members of the board (and I had not), but that the community had presented themselves well, and based upon the question posted by the members I believed that there was support for their argument. We then said our goodbyes and our conversation ended.

Title nine of the Rules and Procedures of the St. Mary's County Planning Commission stated that no member of the commission may communicate ex parte, or outside of the

record, with any person regarding the merits of a case which is the subject of a public hearing.

I do not believe that, at any time, I discussed the merits of the Mill Cove Harbor or the Mill Cove Manor applications with Mr. Jackson. Nor did Mr. Jackson attempt to discuss these applications with me. I do not believe that this conservation influenced my ability to render an objective and impartial decision regarding these applications."

Mr. Weiskopf stated the Planning Commission made a decision on May 11, 2009, the applicant appealed the decision to the Board of Appeals on May 26, 2009 and on August 27, 2009 the Board of Appeals dismissed the appeal. Mr. Weiskopf stated this came before the Planning Commission for reconsideration on September 14, 2009 at which time the Planning Commission voted to reconsider. Mr. Weiskopf stated pursuant to Article 9-506 of the Environmental Article or Section 1.5 of the St. Mary's County Comprehensive Water and Sewer Plan the Planning Commission must make findings for the seven (7) factors in order to forward their recommendation to the Board of County Commissioners.

Ms. Guazzo stated Ms. McNeill was absent from the March 23, 2009 meeting and asked if she has educated herself on the case if she is able to vote tonight. Mr. Weiskopf stated yes, Ms. McNeill can vote if she has reviewed all the material submitted at the March 23, 2009 meeting.

Mr. Evans made a motion in the matter of Mill Cove Manor, Case CWSP 08-200-003; having accepted the staff report dated January 26, 2009, and having held a public hearing on the request for amendment to the St. Mary's County Comprehensive Waster and Sewerage Plan (CWSP), and having made findings of adequacy with respect to the objectives and policies of the CWSP as required by the Environment Article of the Maryland Annotated Code and of consistency with the St. Mary's County Comprehensive Plan, I move that the Planning Commission recommend to the Board of County Commissioners to amend service area maps III-27 and IV-27 to change the service categories from W-6D and S-3D (service in 6 to 10 years, developer financed) to W-3D and S-3D (service in 3 to 5 years, developer financed) for property described as Tax Map 27, Grid 24, Parcel 10 in the 8th Election District; I further move that the Chair be authorized to sign a resolution on behalf of the Planning Commission to transmit this recommendation to the Board of County Commissioners and Mr. Hayden seconded. The motion failed by a 2-3 vote with Mr. Reeves, Ms. Guazzo, and Ms. McNeill opposed.

Mr. Evans asked of the seven (7) standards does staff find any of the seven (7) deficient. Mr. Chapman stated no. Mr. Evans stated as a Planning Commission member he does not find any deficiencies in the seven (7) standards. Mr. Evans stated he does not feel as Water and Sewer Category Change the Planning Commission has any authority to deny the request.

Ms. Guazzo made a motion in the matter of CWSP #08-200-003, Mill Cove Manor to amend service area maps III-27 and IV-27 to change the service categories from W-6D and S-6D (service in 6 to 10 years, developer financed) to W-3D and S-3D (service in 3 to 5 years, developer financed) I move that the application be forwarded to the County Commissioners with a recommendation for denial and Ms. McNeill seconded.

Commission members debated and affirmed reasons for the recommended denial of the two applications for water and sewer category amendments which are summarized below. [Exact findings can be found in Resolution #09-07 located at the Department of Land Use and Growth Management]

- The density proposed and the burdensome number of additional lots of limited acreage would result in undue congestion (including traffic) and undermine the investment of the current residents in their homes.

- The proposals would significantly increase the density of homes in the area which is inconsistent with Sections 41.5.1.c & d of the Zoning Ordinance.
- The proposed developments would double the number of homes in the neighborhood while consuming only 18% of the peninsula.
- The pumping station to which the proposed sewer service would connect was the last station to be installed for the Woods at Myrtle Point which may never come to fruition.
- Neighboring residents do not have failing water supply or sewerage disposal systems. The proposal would result in an undue burden to residents required to hook up and pay service fees.
- The proposal is inconsistent with the State Chesapeake Bay Critical Area program based on a letter from the Chesapeake Bay Critical Area Commission.

The motion passed by a 3-2 vote with Mr. Hayden and Mr. Evans opposed.

CWSP #08-200-004 Mill Cove Harbor

Chairman Reeves asked for a motion for approval.

Mr. Evans made a motion in the matter of Mill Cove Harbor, Case CWSP 08-200-004; having accepted the staff report dated January 26, 2009, and having held a public hearing on the request for amendment to the St. Mary's County Comprehensive Water and Sewerage Plan (CWSP), and having made findings of adequacy with respect to the objectives and policies of the CWSP as required by the Environment Article of the Maryland Annotated Code and of consistency with the St. Mary's County Comprehensive Plan, I move that the Planning Commission recommend to the Board of County Commissioners to amend service area maps III-27 and IV-27 to change the service categories from W-6D and S-6D (service in 6 to 10 years, developer financed) to W-3D and S-3D (service in 3 to 5 years, developer financed) for property described as Tax Map 27, Grid 23, Parcel 2, Outparcel A, & Parcel A, & Lot 5000-1A3 in the 8th Election District; I further move that the Chair be authorized to sign a resolution on behalf of the Planning Commission to transmit this recommendation to the Board of County Commissioners and Mr. Hayden seconded. The motion failed by a 2-3 vote with Mr. Reeves, Ms. Guazzo, and Ms. McNeill opposed.

Ms. Guazzo made a motion in the matter of CWSP #08-200-004 Mill Cove Harbor to amend service area maps III-27 and IV-27 to change the service categories from W-6D and S-3D (service in 6 to 10 years, developer financed) to W-3D and S-3D (service in 3 to 5 years, developer financed) I move that the application be recommended for denial to the Board of County Commissioners and Ms. McNeill seconded. The motion passed by a 3-2 vote with Mr. Hayden and Mr. Evans opposed.

Chairman Reeves asked if the motions made for both cases would include the discussion of addressing the seven (7) findings of fact. Mr. Weiskopf recognized the testimony as reasons for denial of the application and asked that a final motion be made to this effect.

Ms. Guazzo made a motion in the matter of the two preceding motions for the recommended denial of Mill cove Manor and Mill Cove Harbor for water and sewer category changes that the Planning Commission attach the members discussion of the reasons they felt the applications were incompatible to the environment, area, traffic, density, neighborhood, etc. to constitute the Planning Commission's findings of fact for these two applications and Ms. McNeill seconded.

Mr. Evans stated he does not feel the Planning Commission has the authority to deny these applications and encouraged the applicant to revise the applications based on comments made and return for a favorable motion.

The motion passed by a 5-0 vote.

PUBLIC HEARING

Chapter 65 “Signs”, Amend Section 65.2(6) (g) “Political Campaign Signs”

Ms. Chaillet gave an overview of the text amendment stating the purpose of the proposed text amendment is to modify Section 65.2 (6) (g) of the Zoning Ordinance pertaining to political campaign signs to delete the language regulating the length of time political signs may be displayed.

Ms. McNeill asked if staff has spoke with surrounding counties about what they are doing in regards to this. Ms. Chaillet stated she has spoken with Calvert County who was unaware of this at this time.

Ms. Guazzo stated in reading the ACLU letter and the referenced cases it seems the courts are recognizing residential signs having no time limits. Ms. Guazzo stated this does not seem to give any relief to commercial properties. Ms. Chaillet stated differentiating between residential and commercial would also place restrictions on the First Amendment.

Ms. McNeill stated she believes this would be very complicated to enforce.

Chairman Reeves opened the public hearing for testimony.

Mr. Walter Burch stated political signs are exempt from permitting requirements and therefore can be placed anywhere. Mr. Burch recommended categorizing political signs as temporary signs. Mr. Burch stated he called Ms. Deborah Jeon at the ACLU to run this idea by her and she seemed to be okay with this suggestion. Mr. Burch asked that the Planning Commission deny this request and allow staff time to contact the ACLU with this suggestion prior to bringing this back to the Planning Commission for more discussion. Mr. Burch stated as long as we are not eliminating the allowance of signs completely we would not be violating freedom of speech.

Mr. John Parlett stated he agreed with the comments of Mr. Burch. Mr. Parlett stated his concern is that multiple signs would be placed on a single property. Mr. Parlett stated the Calvert County one line solution of giving this responsibility to the State is a good idea as well.

Ms. Guazzo asked that staff contact the Town of Leonardtown regarding this to see what provisions they might have.

Chairman Reeves left the record open for 10 days for additional comment and continued the case to October 26, 2009.

DEVELOPMENT REVIEW

CCSP #08-132-017 – Future Home & Health Care

Postponed to October 26, 2009

DISCUSSION

RPD Task Force & Sue Veith – Briefing on TDRs

Ms. Veith gave an overview of the TDR Program stating there are 202,569 acres protected by easements. Ms. Veith stated the county TDR and clustering requirements achieves better land conservation than 1:20 zoning while preserving economic options for landowners and for affordable homes in the Rural Planning Areas. Ms. Veith stated the Priority Preservation Area (PPA) program will enhance efforts but is not intended to achieve all land conservation goals for the county.

ADJOURNMENT

The meeting was adjourned at 8:35 p.m.

Jada Stuckert
Recording Secretary

Approved in open session: November 9, 2009

Stephen T. Reeves
Chairman