

**MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Monday, September 13, 2010**

Members present were Brandon Hayden, Chairman; Shelby Guazzo, Joe Meinert, Susan McNeill, Merl Evans, Martin Siebert, and Lawrence Chase. Department of Land Use & Growth Management (LUGM) staff present were Derick Berlage, Director; Bob Bowles, Planner IV; Jeff Jackman, Senior Planner; 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 August 9, 2010 were approved as presented.

DEVELOPMENT REVIEW

#10-142-007 – Kimball/Dixon Subdivision Lots 1 & 2

Mr. Berry gave an overview of the request for removal of the intra-family transfer restriction from lots 1 and 2 stating at this time staff is recommending denial of the request however, the applicant can deplat the lots thus removing the restriction and returning the property to a single parcel.

Ms. McNeill stated 3.d of the staff report recommends an environmental review team review this application to make findings of facts. Ms. McNeill stated she feels a portion of this request may have something to do with the absence of an environmental report. Ms. McNeill stated she is not in favor of granting an exception without having an environmental report. Ms. McNeill stated she feels this application is not ready to be decided on by the Planning Commission. Ms. McNeill stated the Critical Area Commission representative can not be the entire review team.

Ms. Guazzo asked if this was presented to the Technical Evaluation Committee (TEC) and/or the Planning Commission. Mr. Berry stated this application went through TEC however was not required to go before the Planning Commission. Ms. Guazzo asked why the property would have to be deplatted. Mr. Berry stated it appears that this parcel was set aside as some type of density. Mr. Berry stated outparcel A is outside the Critical Area boundary and it seems a portion of it would be able to be developed. Ms. Guazzo stated this outparcel is under five acres. Mr. Berry stated development rights could be obtained by purchasing TDRs.

Mr. Meinert asked if the interfamily transfer applies to both lots 1 and 2. Mr. Berry stated it applies to the lot being created. Mr. Meinert stated the lot line for lot 1 seems to go directly through the center of the house. Mr. Meinert asked if the owner of the subdivision is the actual owner of the parcels at the time of the request or the original owner. Mr. Berry stated the restriction runs with the land. Ms. McNeill referenced plat note #3. Mr. Evans asked for an opinion from Mr. Weiskopf. Mr. Weiskopf stated the owner is referring to the original owner who is subdividing the property. Mr. Weiskopf stated he would recommend that the Planning Commission decide if there was a bonafide transfer. Mr. Berry stated if the transfer never took place then the restriction was never fulfilled in the first place.

Ms. Guazzo stated there is no waterfront with the lot designated for intrafamily transfer. Ms. Guazzo asked if a piece of the original parcel could be deed reconfigured to make both lots waterfront lots. Mr. Berry stated no, the Critical Area Commission will not allow a deed reconfiguration simply to create two waterfront lots. Mr. Berry stated a confirmatory plat would have to be done removing the restriction and he believes the parcels would then not be in accordance with the Critical Area Laws. Mrs. Guazzo stated by Mr. Dixon's death and his will giving ownership of the intrafamily transfer lot to his children, that it then became, in fact, an intrafamily transfer. Ms. Guazzo stated when a title search is done; it is her understanding that any restrictions or notifications are to be supplied to the owners. Ms. Guazzo stated if the title search failed to reveal all the information shouldn't the title searcher be held responsible. Mr. Longmore stated the plat would be part of the title however in this case it was missed during the process.

Mr. Longmore, representative of Mr. and Mrs. Kimball, provided the members with 11 x 17 copies of the plat, *hereby labeled as Exhibit 1 by the Recording Secretary* and gave an overview of the request. Mr. Longmore submitted the original zoning permit for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*; nine pages of back-up information on the parcels, *hereby labeled as Exhibit 3 by the Recording Secretary* and four pages of real property data search, *hereby labeled as Exhibit 4 by the Recording Secretary*. Mr. Longmore stated the Critical Area Commission did not oppose this request, taxes have been paid on these lots for many

years, and the restriction is unlimited in duration. Mr. Longmore stated there is not a requirement as to how long an owner has to transfer the property to a family member.

Ms. Guazzo referred to the building permit which clearly states "the intra-family subdivision requirements must be met prior to issuance of a building permit". Ms. McNeill stated she does not feel this needs a full blown environmental study however she does feel that we should follow our own requirements. Ms. McNeill stated she is not comfortable with moving forward without the environmental review. Mr. Longmore stated there is no development being proposed here and he and his client feel there is more than enough evidence supporting the change in circumstance.

Mr. Evans stated if we were to approve this it would be sent before the Critical Area Commission again for yet another decision. Mr. Evans stated he feels we have an opportunity to do the right thing and remove the restriction. Mr. Evans recommended approving the request based on the testimony heard tonight. Ms. Guazzo stated both sides have a valid point however she feels the restriction should be lifted. Mr. Siebert stated he doesn't even see where the Critical Area comes into play here.

Mr. Meinert asked if the series of affidavits were researched by Mr. Longmore. Mr. Longmore stated no, however he has since reviewed each affidavit. Mr. Meinert stated he would like to see each of the former owners here to make the case of why they sold the lots and what their opinion is on the change of circumstances. Mr. Hayden stated he does not believe these individuals can speak for the deceased. Ms. McNeill stated we simply wish we could have more background information in this case. Mr. Meinert stated the growth allocation process is probably the other avenue for the applicant to move forward with building.

Mr. Evans made a motion in the matter of #10-142-007, Kimball/Dixon Subdivision Lots 1 & 2, having made a finding that a change in circumstances that would warrant an exception has occurred I move that the exception be approved and Mr. Siebert seconded. The motion passed by a 5-2 vote with Ms. McNeill and Mr. Meinert opposed.

ANNOUNCEMENTS

Planning Commission (PC) Annual Report Decision

Mr. Jackman stated he has made a few alterations to the layout and asked if there are any additional additions or amendments.

Mr. Meinert made a motion that the Planning Commission accept and approve the draft Annual Report for 2009 as presented by staff this 23rd of August 2010, and that the Chair be authorized to sign a letter on behalf of the Planning Commission to transmit this report in final form to the Board of County Commissioners and Mr. Siebert seconded. The motion passed by a 7-0 vote.

ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

Jada Stuckert
Recording Secretary

Approved in open session: October 12, 2010

Brandon Hayden
Chairman