

**MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION  
MEETING  
CENTRAL HALL \* SOUTHERN MARYLAND HIGHER EDUCATION CENTER  
44219 AIRPORT ROAD \* CALIFORNIA, MARYLAND  
Monday, April 10, 2006**

Members present were Joseph St. Clair, Chair; Steve Reeves, Vice Chair; Lawrence Chase; Merl Evans; Brandon Hayden; and Susan McNeill. Howard Thompson was excused. Department of Land Use and Growth Management (LUGM) staff present was Denis Canavan, Director; Jeff Jackman, Senior Planner IV; Phil Shire, Planner IV; Sue Veith, Planner IV; Dave Berry, Planner I; and Keona Courtney, Recording Secretary. County Attorney, Christy Holt Chesser, was also present.

The Chair called the meeting to order at 6:35 p.m.

**DEVELOPMENT REVIEW**

**FSUB #05-120-012 – AVONLEA SUBDIVISION, SECTION 2, PHASE 3**

The applicant is requesting final review and approval of 17-lots in a major subdivision. The property contains 51.78 acres; is zoned Rural Preservation District (RPD); and is located on the south side of Guy Family Drive, approximately 1,400 feet east of Mechanicsville Road.; Tax Map 9, Grid 19, Parcel 127.

Owner: William E. & Margaret A. Guy  
Present: Billy Higgs, Little Silences Rest Inc.

Mr. Shire explained that the Avonlea Subdivision is a grandfathered subdivision and that the two phases before the Planning Commission are the final two phases. The Planning Commission granted preliminary approval of Phase 2 in April 2005 and Phase 3 in September 2005, and made findings for adequate facilities, except for stormwater management, at that time. Mr. Shire explained that the findings for stormwater management could now be made.

**Mr. Reeves moved that having made a finding of adequate facilities, including stormwater management; and having accepted the staff report, dated March 28, 2006; and having made a finding that the referenced project has met all TEC agency requirements; the Planning Commission grant final subdivision plan approval. The motion was seconded by Mr. Evans and passed by a 6-0 vote.**

**FSUB #04-120-025 – AVONLEA SUBDIVISION, SECTION 2, PHASE 2**

The applicant is requesting final review and approval of 11-lots in a major subdivision. The property contains 51.78 acres; is zoned

Rural Preservation District (RPD); and is located on the South side of Guy Family Drive approximately 1400 feet east of Mechanicsville Road.; Tax Map 9, Grid 19, Parcel 127.

Owner: William E. & Margaret A. Guy  
Present: Billy Higgs, Little Silences Rest Inc.

**Mr. Reeves moved that having made a finding of adequate facilities, including stormwater management; and having accepted the staff report, dated March 28, 2006; and having made a finding that the referenced project meets all TEC agency requirements; the Planning Commission grant final subdivision plan approval. The motion was seconded by Mr. Evans and passed by a 6-0 vote.**

## **PUBLIC HEARING DECISION**

Regarding a proposed amendment to the document entitled “Quality of Life in St. Mary’s County – a Strategy for the 21st Century” which serves as the Comprehensive Plan adopted under authority of Article 66B of the Annotated Code of Maryland. The proposed amendment is published in draft form as St. Mary’s County Transportation Plan Draft August 2005, and is briefly described as follows: Amend page 105 of the Comprehensive Plan to incorporate the St. Mary’s County Transportation Plan to guide future generalized land use and capital improvements.

Present: John Groeger, Department of Public Works and Transportation (DPW&T)

Comments received by the Planning Commission during the open record period were accepted and provided to the consultant who is preparing the revised Plan, which is not expected to be complete until the end of April. In the meantime, Mr. Jackman explained that staff recommends that the Planning Commission approve the revised Plan and forward their recommendation to the Board of County Commissioners (BOCC). This will allow the Plan to go before the BOCC for their public hearing.

Mr. St. Clair and Ms. McNeill expressed concern about not being able to see the final draft of the Plan before forwarding a recommendation to the BOCC. Mr. St. Clair requested that one or two members of the Planning Commission meet with staff and have the opportunity to review the revised Plan to ensure that it contains the appropriate revisions. The Planning Commission agreed with this request. Mr. Canavan agreed to schedule a meeting with the Planning Commission to review the revised Plan once it is received from the consultant.

**Mr. Evans moved that having conducted a public hearing on the Plan; and finding that adoption of the Transportation Plan, as presented at the February 27, 2006 public hearing and *modified as directed by the Planning Commission* is in the best interest of the health, safety and welfare of the citizens of St. Mary's County; the Planning Commission grant approval of the Plan *as modified*; and that the Planning Commission forward a recommendation to the Board of County Commissioners that the Comprehensive Plan (Quality of Life in St. Mary's County – A Strategy for the 21st Century) be amended to incorporate the Transportation Plan by reference; and authorized the Chair to sign a resolution to convey this recommendation to the Board of County Commissioners. The motion was seconded by Mr. Hayden and passed by a 6-0 vote.**

## **PUBLIC HEARING**

To consider amendments to the St. Mary's County Comprehensive Zoning Ordinance (CZO) proposed for Chapter 26, Transferable Development Rights (TDR); Schedule 32.1, Development Standards; and Schedule 32.2, Modifications to Development Standards, Transferable Development Rights (TDRs) provisions.

Legal advertisements were published in *The Enterprise* on 3/22/06 and 3/29/06 and in *St. Mary's Today* on 3/26/06 and 4/2/06.

Mr. Canavan's Exhibit 1: Attachment #1 – Amendments as proposed by the TDR Task Force

Mr. Canavan's Exhibit 2: Attachment #2 – Amendments as proposed by the TDR Task Force plus revisions proposed by staff along with clean versions of the amendments; amendments to Chapters 32 and 51

Mr. Canavan's Exhibit 3: Table entitled "How many TDRs do I Need?"

Mr. Canavan's Exhibit 4: TDR Scenarios

Mr. Canavan's Exhibit 5: Summary of staff recommended changes for proposed TDR text amendment

Mr. Jarboe's Exhibit 1: Comments regarding the TDR Program

Mr. Jarboe's Exhibit 2: Mr. Canavan's memo to BOCC dated 2/3/06

Mr. Jarboe's Exhibit 3: TDR Task Force Report dated 4/5/06

Mr. Jarboe's Exhibit 4: Maryland Assessment for the Valuation of Wetlands

Mr. Dorsey's Exhibit 1: Comments on TDR Discussion

Ms. McNeill asked if the appropriate legal advertisements were published for all chapters of the Ordinance under review, and expressed concern about the public receiving the proper notice of proposed changes to Chapter 32 of the Ordinance which contains development standards. Mr. Canavan stated that the

commercial development standards were not advertised, but that Chapter 32 was advertised. He explained that all chapters of the Ordinance which have proposed amendments must be re-advertised since the BOCC will have to consider the proposed amendments as well. Ms. McNeill explained that she feels that the development standards are beyond the scope of the proposed TDR amendments. Mr. Canavan explained that he does not feel that this is the case and explained that some commercial development standards are based on TDRs and that all of these standards are interconnected and help to strengthen the TDR Program.

Mr. Canavan provided an explanation for each proposed TDR amendment, as summarized in a memorandum to the Planning Commission dated April 10, 2006.

Mr. Reeves asked Mr. Canavan about non-agricultural uses as written in paragraph two of Section 26.5, and whether or not a farmland owner could build a machine shop or have a similar use on his/her property. Mr. Canavan explained that staff's clarification to the language in this paragraph will not prohibit a property owner from seeking conditional use approval of a non-agricultural use on their property. Mr. Canavan explained that the TDR program is to remove the residential capability from farmland. Staff also clarified the language in paragraph three of this Section regarding counting TDR land toward open space requirements. He explained that although a property owner may choose to sell TDRs, he/she will still have permitted uses on the property and be able to apply for conditional use approval through the Board of Appeals for other uses that are desired. Mr. Reeves asked if there is a limit to the number of TDR purchases by fee-in-lieu. Mr. Canavan said that there is no limit to purchases by this method, and that the payments collected from the fee-in-lieu will be directed towards agricultural preservation in the County. The Department of Economic and Community Development (DECD) will be able to use the money to purchase easements on lands.

Ms. McNeill expressed concern about the fee-in-lieu program, explaining that because there is no limit to the number of TDR purchases by this method the only protection of the Fund and land will come from the Agricultural Preservation Advisory Board. Developers may choose to always pay the fee-in-lieu rather than purchase TDRs from the private market. Mr. Canavan explained that he feels that there is value to having a fee-in-lieu program, and that he does not foresee developers always choosing to pay the fee instead of purchasing TDRs from the private market. Ms. McNeill explained that she thinks it may be more difficult for developers to purchase them from the private market. Mr. Canavan acknowledged Ms. McNeill's concern, but stressed that he feels that there will be more TDR purchases from the private market than by the fee-in-lieu method. He explained that if TDR purchases occur more by fee-in-lieu then most likely the BOCC will hear concerns from farmland owners in the RPD, or the BOCC may choose to accept a fee-in-lieu for only a certain number of TDRs per year.

Mr. St. Clair asked Mr. Canavan if the Planning Commission can recommend to the BOCC that the fee-in-lieu be an open line item in the Capital Budget so they can ensure that the money placed in the Fund is used toward the intended agricultural purposes and not transferred to general revenue. Mr. Canavan said that this can be done if it has not already been done. Ms. McNeill asked if there is a requirement that the money in the Fund be spent in a particular fiscal year. Mr. Canavan said that there is not. Ms. McNeill explained that there needs to be a more formal oversight procedure for the fee-in-lieu program, and asked if the Planning Commission can have a continued role in its oversight. Mr. Canavan explained that LUGM will provide the Planning Commission with the information that they need in order to monitor the fee-in-lieu program. Ms. McNeill explained that she feels it is the Planning Commission's role to monitor the fee-in-lieu program and make recommendations as to how the program may be improved. Mr. Canavan explained that the Planning Commission has the authority to make changes to the entire Ordinance and not just the TDR Program, and therefore he does not feel that it is necessary to include this formality within the Ordinance.

Ms. McNeill explained that she feels the design enhancements are much broader in scope than the TDR Program, and the public should be made aware of these proposed changes since they will relate to all developments. Ms. McNeill suggested to Mr. Canavan that proposed changes to Chapter 32 of the Ordinance be advertised and a public hearing be held on this before closing the record. Mr. Canavan agreed and explained that proposed revisions to Chapter 51 will also be advertised.

Ms. McNeill asked if previously approved TDR transfers will be renumbered. Mr. Canavan explained that LUGM has assigned a serialized number to each TDR that is processed. The serialized number is ultimately recorded with the original TDR documents and recorded in the Land Records office. This number will remain with that specific TDR and will not change. The book page number of any interim TDR transfer will also be shown on the documents. Mr. Canavan explained that this process is necessary to make sure that the TDRs are able to be tracked and monitored.

Mr. Chase asked if a developer can resell TDRs that he/she may not be using. Mr. Canavan explained that a developer can purchase an excess number of TDRs and that until they land on a receiving area the TDRs can be resold. He explained that a developer must indicate the number of TDRs that he/she has, and the use of these TDRs on the preliminary plan; however staff will not require the developer to show ownership of the TDRs until the final subdivision record plat is submitted and at the time of major site plan approval.

Ms. McNeill asked if it is normal practice for an attorney to certify that a transferee has met all of the requirements for TDRs or if a notarized certification

is sufficient. Mr. Canavan said that it is normal practice for an attorney to make the certification.

The Chair opened the hearing to public comment.

John Parlett, a member of the TDR Task Force, explained that he thinks that the recommendation to the BOCC is appropriate, but that there are a number of details that the Task Force needs time to review since staff has made revisions. He expressed concern about staff's recommendation to remove tidal wetlands in the calculation of TDRs. This will require individuals who live along the shoreline to pay for surveys to determine the number of TDRs that they have, and should be reconsidered given the mileage of shoreline in the County. Mr. Parlett recognized the hard work that staff has put into this program, but expressed concern about the volume of information. He explained that staff's proposed revisions are much longer than the Task Force's original proposal. Mr. Parlett stated that he is greatly concerned about proper advertisement and staff's recommended changes to Section 32.3 of the Ordinance regarding design enhancements. He said that the Task Force was proposing to eliminate bonus densities and replace them with TDRs, which would help the private market. Mr. Parlett suggested that all of these proposals be reviewed by the Task Force, and that they report back to the Planning Commission and staff on what they agree or disagree with. Mr. St. Clair reiterated that the Planning Commission would like to have a continuation of the public hearing to consider all of the revisions, which will also allow the Task Force time to review them. Mr. Canavan explained that he would like to review the design enhancement provisions with the Task Force to make sure that the recommendations are not difficult to comply with.

Robert Jarboe, a local resident, explained that he is pleased to have a TDR Program, although it may not be the best one. He said that he is pleased that this program will allow farmers and other landowners to preserve their land. He expressed concern about some of staff's recommendations to the BOCC, as outlined in Exhibit 2 and the recommendations provided in the April 10<sup>th</sup> staff report. He disagreed with staff's recommendation to remove tidal wetlands from the calculation of TDRs because property owners are paying taxes on these lands and this is contrary to what was presented by the TDR Task Force. Mr. Jarboe explained that he is concerned that staff has altered the State legislation to discourage participation in the TDR Program. He also stated that an existing dwelling unit should have the zoning density that it had when the dwelling unit was originally built.

Linda Vallandingham, a local resident, explained that she supports the comments made by Mr. Parlett and Mr. Jarboe, and that any TDR Program proposal that is adopted should be a continuous, working document. Wanda Norris stated that she agreed with the comments provided by Mr. Jarboe and Ms. Vallandingham.

George Baroniak, a local resident, explained that he has been working on this Program as a member of the Agricultural Preservation Advisory Board for three years and as a member of the TDR Task Force for one year. He said that there have been numerous changes proposed by staff that neither of these groups agrees with. He said that he is discouraged and disappointed about the direction that the TDR Program is heading.

Phil Dorsey, a local resident, explained that he feels that the BOCC should pass a comprehensive TDR proposal before the general election, with modifications as recommended by the Planning Commission. He explained that he disagrees with prohibiting the use of TDRs in Rural Legacy areas because he feels that there should be an equal amount of TDRs. He explained that the Planning Commission and TDR Task Force should take a closer look at driving the demand for TDRs in the Development District as opposed to the RPD zone. Mr. Dorsey suggested that these groups consider an amendment to the program that would eliminate the 50 percent open space requirement in the Residential Low-Density (RL) zone because achieving a density of five units per acre is nearly impossible. He suggested that these groups consider doubling density in Downtown Core Mixed Use (DMX) or Office Business Park (OBP) zones by using TDRs. Mr. Dorsey recommended retiring Residential Neighborhood Conservation (RNC) lots so that they can be registered as TDRs and property owners can recover the value of these lots and not develop the property in these areas surrounded by the RPD. He explained that the fee-in-lieu program is essential and that there may be more TDR purchases if the cost were lowered. Ms. McNeill asked Mr. Dorsey if he feels that this will discourage sales from sending parcels. Mr. Dorsey said that he does not think that it will due to the number of available TDRs on the market.

Jay Duke, a local resident, agreed with Mr. Dorsey's comments regarding the purpose of the TDR Program, and added that he thinks paragraph 2 of Section 26.1 should be reworded as follows: "In order to protect agricultural areas and give relief to the owners of such properties an alternative to development, or a means to recover some of the value previously stripped from them, TDRs are established." He explained that he feels land is being taken from people, and that they are suffering in the process. Mr. Duke stated that he feels that this hearing was not publicized correctly considering the affect that it will have on so many people.

Bubby Norris, a local resident and member of the TDR Task Force, explained that he feels that the proposals need to be reviewed again because there are changes that they were not aware of and did not approve.

John Wheeler, a local resident, explained that he feels that the Planning Commission needs to develop their own written proposal for the TDR Program and hold a public hearing on it. He encouraged the Planning Commission to look

closely at TDRs to make sure that they will help retain rural areas and preserve agricultural uses in these areas.

Joe Densford, a local resident and TDR Task Force member, explained that he feels the Task Force needs more time to review staff's revisions. He explained that if you change one aspect of the program it has the potential to affect another aspect of the program. He said that some of staff's recommendations may in fact impede the Program, such as requiring land surveys which will be expensive and discourage participation in the program. Mr. Densford stated that the Task Force will review staff's recommendations and plan to accept those that will improve the program; however, they will report back to the Planning Commission on recommendations that they feel will impede the program.

Kenneth Boothe, a local farmer and member of the Farm Bureau, explained that he does not want to liquidate his property but does not feel that farmers or other property owners who wish to do this should be prohibited from doing so. He said that the TDR Task Force and Agricultural Preservation Advisory Board members do not represent the feelings of all of the farmers in the County. He stated that the TDR Program has not been explained to many of the farmers, and therefore they do not know what is being proposed. Mr. Boothe explained that he feels the TDR Program is an instrument used to downsize property, and is too aggressive. He said that he would approve of a TDR Program that did not involve the 10 acre lot size. He argued that the program seems to be geared more toward developers than farmers and is not helping farmers to preserve the equity of their land and property rights. He stated that he wants the program to be adjusted.

Mr. Canavan explained that staff is willing to meet with any individual or group before the Planning Commission meets on this subject matter again, to lend clarification to what is being proposed. He recommended that the Planning Commission leave the public hearing open and continue it at a future meeting. He stated that all applicable sections of the Ordinance to be discussed will be properly advertised. Ms. McNeill expressed concern as to whether or not there will be enough time for all parties to meet and review the proposals before the next public hearing. Having considered this, Mr. Canavan explained that he could not guarantee when the next TDR public hearing would be conducted and that this will be determined at a later date.

**ADJOURNMENT**

The meeting was adjourned at 8:50 p.m.

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Keona L. Courtney  
Recording Secretary

Approved in open session: April  
24, 2006

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Joseph St. Clair  
Chairman