

**MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION
MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Monday, August 22, 2005**

Members present were Larry Greenwell, Chairman; Joseph St. Clair, Vice Chair; Bryan Barthelme; Lawrence Chase; Steve Reeves; and Howard Thompson. Julie King was excused. Department of Land Use and Growth Management (LUGM) staff present was Denis Canavan, Director; Jeff Jackman, Senior Planner IV; Yvonne Chaillet, Planner IV; Bob Bowles, Planner II; Mark Kalmus, Planning Technician; and Sharon Sharrer, Recording Secretary. Deputy County Attorney Heidi E. Dudderar was also present.

The Vice Chair called the meeting to order at 6:31 p.m.

APPROVAL OF MINUTES – The minutes of August 8, 2005 were approved as recorded.

PUBLIC HEARING

**CWSP #05-132-017 – TAZELAAR PROPERTY, CWSP
Amendment**

The applicant is requesting amendment to service maps III-34 and IV-34 to change the service area category from W-6 and S-6 (service in six to ten years) to W-3D and S-3D (service in three to five years, developer financed). The property contains 6.22 acres; is zoned Residential Mixed Use District (RMX), Airport Environs Overlay (AE); and is located at Tax Map 34, Grid 16, Parcels 33 and 441.

Owner: Russell E. Tazelaar, Trustee
Agent: Billy Mehaffey, of Mehaffey and Associates

The Chair opened the hearing to the public.

Patrick McGonigle, the Commander of VFW Post 2632, expressed concern with the location of the property lines shown on the applicant's drawing. He explained that the VFW has a 30 foot right of way that comes out onto MD Route 235. He said that he believes that the sewer line shown on the drawing cuts into both Dr. Errington's property and the VFW property. Mr. Mehaffey explained that the developer is aware of the 30 foot right of way, and that there is some question about the location of the actual property line. He said that the developer will make certain that both the water and sewer lines will be built on property controlled by the developer. Mr. Mehaffey explained that the developer

has no intention of putting any kind of improvements on the neighbors' properties.

Harry Errington, Dr. Errington's father, questioned whether the existing access will to both Dr. Errington's office and the VFW property will remain in place. Mr. Mehaffey agreed that it would.

The Chair closed the hearing to public comment.

The Planning Commission conducted and closed a public hearing, leaving the record open for ten (10) days for written comments.

CWSP #05-132-009 – VIRGINIA KNOLLS, CWSP Amendment

The applicant is requesting amendment to service maps III-34 and IV-34 to change the service area category from W-6 and S-6 (service in six to ten years) to W-3D and S-3D (service in three to five years, developer financed). The property contains 20 acres; is zoned Town Center Mixed Use District (TMX), Airport Environs Overlay (AE); and is located at 44232 Greenery Lane in Hollywood, Maryland; Tax Map 34, Grid 2, Parcel 327.

Owner: Benny Potter, Contract Purchaser
Agent: Jerry Nokleby, of Nokleby Surveying

Mr. St. Clair explained that he would not participate in the decision on this case due to a possible conflict of interest, and left the room for the entire discussion and public hearing on the CWSP Amendment request for Virginia Knolls.

Mr. Nokleby explained that a design has been completed for the sewer system underneath MD Route 235 which has recently been approved by the Metropolitan Commission (MetCom). This system will accommodate the proposed project along with anything else in the neighborhood. He explained that this will correct systems which are currently failing in the neighborhood.

The Chair opened the hearing to the public.

Jim Francisco, a Hollywood resident, expressed concerns with exactly where the location of the sewer pumping station will be and with who would be covering the costs of the extension of water and sewer service. The Chair explained that the developer is responsible for paying all of the costs for extension of both water and sewer service. Mr. Nokleby explained that the exact location of the pumping station has not yet been determined, though pumping stations are generally located in the central portion of the property. Mr. Francisco explained that he is somewhat opposed to this development due to the large number of units proposed in such a small space.

The Chair closed the hearing to public comment.

The Planning Commission conducted and closed a public hearing, leaving the record open for ten (10) days for written comments.

THE RIGHT TO FARM

Mr. Canavan explained that the purpose of the proposed zoning text amendments is to revise the language and definitions now contained in the St. Mary's County Comprehensive Zoning Ordinance (CZO) to afford greater protection for a person's right to farm and engage in agricultural activities. The purpose of the proposed additional legislation to the County Code for St. Mary's County, with the addition of Chapter 254, is to set up a reconciliation committee wherein property owners who may be adjacent to a farming activity have the opportunity to have their concerns addressed by an appointed committee. Mr. Canavan explained that the Comprehensive Plan for St. Mary's County specifically emphasizes the retention of the rural character, and the retention of farming and farming businesses, in the goals and objectives of that Plan.

Mr. Canavan briefly explained all proposed amendments to the text of the CZO and the proposed addition to the County Code, and answered questions from Commission members. He explained that these changes provide clarification and strengthen the language contained in the CZO regarding the Right to Farm. Mr. Canavan said that the addition of Chapter 254 to the County Code sets up a committee, which would be appointed by the Board of County Commissioners, which looks at potential adversity of farming activities as realized by adjoining residents. The reconciliation committee would help to determine the potential nuisance being caused by the farming activity, and provides a first option for airing grievances for any aggrieved neighbor.

The Chair opened the hearing to the public.

Bryan Siebert, a resident of Scotland, asked that his testimony be entered into the record and that a written response be provided to him. He explained that he was not against agriculture or farming. His concern is when those activities harm the Bay, wildlife, the health of the citizens, or pose other problems such as increased hazards from hurricanes. He explained that he does not feel there is a policy in place to permit the environment to overcome the chopping down, building upon, and pollution of our sensitive landscape. Mr. Siebert said that he feels the composition of the reconciliation committee, as shown in the proposed Chapter 254 of the County Code, does not adequately represent environmental objectives.

Bubby Norris, Joseph Wood, Linda Vallandingham, Robert Jarboe, George Baroniak, and Donald Strickland all expressed support for the proposed

Right to Farm text amendment and encouraged the Planning Commission to forward a recommendation for approval of these changes to the Board of County Commissioners, explaining that the State of Maryland regulates the environmental issues.

Barry Roache, Chairman of the Agriculture, Seafood, and Forestry Commission, agreed with previous speakers that the proposed text amendments are important and explained that he felt it was imperative that the Right to Farm provisions be extended to working farms in all zoning districts. He said that proper forest management does require occasional harvesting of trees. Mr. Roache said that he felt that landowners have the right and privilege to harvest timber on their own property. Even though this right does currently exist, he explained that landowners need a permit to harvest more than just a few trees.

Carolyn Siebert, another resident of Scotland, explained that she feels there are significant differences between farming and timber harvesting. She explained that the impact on the land and the environment could often be much more significant with the harvesting of trees, and suggested that these issues should be handled separately.

The Chair closed the hearing to public comment.

Mr. St. Clair moved that the Planning Commission forward a recommendation to the Board of County Commissioners for approval of the recommended Right to Farm text amendments. The motion was seconded by Mr. Thompson and passed by a 6-0 vote. The Planning Commission authorized the Chairman to sign a resolution to transmit this recommendation to the Board of County Commissioners.

Mr. Canavan explained that the Planning Commission does not normally take advisory positions on other chapters within the County Code, but asked if they would like to make any recommendation, or cite any concerns, on the proposed addition of Chapter 254 to the County Code since it is complimentary in moving forward with the proposed text amendment for the Right to Farm. Mr. Reeves explained that the only thing that really concerns him about the Right to Farm is that sometimes there is a disgruntled landowner who might portray himself as a farmer and become a nuisance to his neighbors, and agreed that he felt it might be purposeful to have the reconciliation committee available in this type of situation.

DEVELOPMENT REVIEW

CCSP #05-132-008 – SMARTRONIX OFFICE COMPLEX, Phase 1

The applicant is requesting review and approval of a concept site plan for two office buildings, totaling 75,452 square feet. The

property contains 14.84 acres; is zoned Industrial (I), Airport Environs Overlay (AE); and is located on the west side of MD Route 235, across from Clark's Landing Road in Hollywood, Maryland; Tax Map 34, Grid 2, Parcel 339.

Owner: Smartronix, Inc.
Agent: Jerry Nokleby, of Nokleby Surveying, Inc.

Mr. Nokleby explained that he feels that this project will enhance the Technical Corridor, and will be beneficial to the residents of St. Mary's County. He explained that they are proposing a major entrance to this project at the current intersection of MD Route 235 and Clark's Landing Road and a 30 foot wide urban standard private road through this project. State Highway Administration (SHA) has requested that the Planning Commission require a public road access, but Mr. Nokleby explained that SHA has no jurisdiction once out of the state highway right of way. Mr. Nokleby provided a letter from the Department of Public Works & Transportation (DPW&T) acknowledging that it would be in the applicant's best interest to proceed with a private road design, which would create less impact on the non-tidal wetlands area and would allow the property owner to work within his property instead of having to try to purchase additional property to make a connection road. He explained that DPW&T's primary concern when the project was first proposed was to provide a link into the industrial park.

Commission members asked about if the State would be installing a traffic signal in that location, and for a report on the number of accidents at intersections in that area. Mr. Nokleby said that he believed that the State was looking at putting a light in at either that intersection or at the next one, but that a traffic study would dictate whether a light was installed. Mr. Thompson explained that the Transportation Plan indicated a light at Airport View Drive, but not at Clark's Landing Road. Mr. St. Clair asked how approval could be justified without a traffic study. Mr. Nokleby explained that a traffic study was not done at this phase of the process.

Since the decision on final approval requests for site plans is made administratively, the Planning Commission asked if there was any way they could be provided with answers to their questions before the final approval stage of the project. Commission members expressed concern with the fact that decisions on the requests for final approval on site plans are made administratively by the Planning Director, since traffic impact studies and Adequate Public Facilities reports are not completed prior to the final time the Planning Commission has the opportunity to see these plans.

Mr. St. Clair moved that the Planning Commission be provided information on the traffic study and Adequate Public Facilities for this

development and be allowed the opportunity to comment on these reports before the Planning Director makes a decision on the request for final approval. The motion was seconded by Mr. Chase and passed by a 6-0 vote.

Mr. St. Clair moved that having accepted the staff report, dated August 15, 2005; and having made a finding that the objectives of Section 60.5.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; and noting that the referenced project has met all requirements for concept approval; the Planning Commission grant concept site plan approval. The motion was seconded by Mr. Barthelme and passed by a 6-0 vote.

DISCUSSION

PSUB #04-120-015 – GRANDVIEW HAVEN SUBDIVISION, Phase 1

Mr. Canavan explained that a formal request for reconsideration of the Planning Commission's decision of July 25, 2005 for Grandview Haven Subdivision, Phase 1, was received in the form of a letter from Dugan, McKissick, Wood, and Longmore on behalf of their client within ten (10) days of that decision.

Mr. St. Clair asked that Section 12 of the St. Mary's County Planning Commission's Rules of Procedures be read into the minutes to explain to the general public the rules of procedure for reconsideration:

SECTION 12 – RECONSIDERATION

- (a) A written request submitted to the Planning Director to reconsider may be made by any individual at anytime within ten (10) working days of the date of the Planning Commission's final decision. Such request must detail the reasons for reconsideration and should generally relate to situations of mistake, fraud, surprise or inadvertence. The request shall be forwarded to the Commission at its next regularly scheduled meeting for its consideration.
- (b) Any member of the Planning Commission who voted with the majority on the original proposal may move for reconsideration within thirty (30) calendar days of the receipt of the reconsideration request by the Planning Director. If no such member remains on the Commission, the motion may be made by the Chairman, on his/her own initiative, or at the request of any Board member.
- (c) If the staff or a member of the Planning Commission is of the opinion that a final decision is appropriate for reconsideration by the Commission, they shall arrange to have such decision on the agenda for discussion purposes. Sufficient public notice shall be given of the proposed discussion in accordance with these rules.
- (d) After a motion to reconsider has been adopted, the Planning Commission may hear further testimony and receive additional evidence on any relevant issue after due public notice.
- (e) If the Commission does not grant reconsideration within its next two (2) regular meetings after receipt of the request by the Planning Director, it shall be deemed to have been denied without further action.

Bill McKissick, of Dugan, McKissick, Wood, and Longmore, told Planning Commission members that if the requirements of the Comprehensive Zoning Ordinance are met, a project should be approved. He explained that there will always be people who are opposed to projects, but suggested that if the Planning Commission feels that the rules should be changed then an effort should move forward to change the rules. Mr. Beck explained that he has had meetings with area residents to try to work out some of their concerns. He explained that they can make some changes to address some of the residents' specific concerns with buffering and appearance, but that they had to agree to disagree on the density of the project.

Mr. Canavan reminded the Planning Commission that several questions about Grandview Haven, Phase II came up during the consideration of the request for preliminary approval of Phase I. He explained that Phase II of the proposed development has just been reviewed by the Technical Evaluation Committee (TEC) for comments. If the Planning Commission decides to reconsider the request for preliminary approval of Phase I, they would have the opportunity to see both phases of the development at the same time even though they are not at the same stage of the approval process. Mr. McKissick stressed that they would be happy to bring the concept plan for Phase II to the Planning Commission with the reconsideration for the preliminary plan for Phase I, but explained that a full preliminary plan for Phase II would not be available at that time.

Mr. St. Clair and Mr. Barthelme both expressed a concern that the applicant could appeal the Planning Commission's July 25, 2005 decision, and that any opportunity for further efforts from the applicant to address the concerns of area residents might be lost. They agreed that they would like to have the opportunity to hear further information from the applicant regarding both of the proposed phases of the development.

Mr. Barthelme made a motion that the Planning Commission reconsider the applicant's request for preliminary plan approval for Grandview Haven Subdivision, Phase 1. The motion was seconded by Mr. St. Clair and passed by a vote of 4-2, with Mr. Reeves and Mr. Thompson voting against the motion. This reconsideration will take place after appropriate public notification has been made.

ADJOURNMENT

The meeting was adjourned at 9:10 p.m.

Sharon J. Sharrer

Recording Secretary

Approved in open session:
September 12, 2005

Larry Greenwell
Chairman