

GARRETT COUNTY PLANNING AND LAND DEVELOPMENT OFFICE

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MINUTES

The Garrett County Planning Commission held its regular monthly meeting on Wednesday, February 6, 2008, at 1:30 pm, in the County Commissioners Meeting Room. Members and guests in attendance at the meeting include:

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|----------------------|----------------|------------------|
| Troy Ellington | Judy Pittman | John Bambacus |
| Tim Schwinabart | Paul Durham | Dr. William Pope |
| George Brady | Amy Nemith | Karen Myers |
| Ruth Beitzel | Kevin Potter | Paul Durham |
| Joe McRobie | Edith Brock | Dr. Joe Smith |
| Tony Doerr | Jon Boone | James Stanton |
| Jeff Messenger | Karen Myers | Sarah Moses |
| Gary Fratz | Bob Willet | Barbara Boone |
| John Nelson-staff | Roger Cutright | Jane Avery |
| William DeVore-staff | Will Rozelle | David Bertsch |
| | | Judy Bertsch |

1. Call to Order – By Acting Chairman, Troy Ellington at 1:30 pm.
2. The January minutes were unanimously approved as submitted.
3. Report of Officers – Planning Commission Election of Officers. The following officers were elected unanimously: Troy Ellington is elected Chairman. Tim Schwinabart is elected Vice Chair and Ruth Beitzel is elected Secretary.
4. Unfinished Business - None
5. New Business-

A. Discussion on Jonathan Kessler’s letter regarding the Planning Commission recommendation on the amendment to the Deep Creek Watershed zoning ordinance.

Mr. Nelson explained that at the last meeting the Commission endorsed a zoning amendment proposal that was recommended back to the Board of County Commissioners that entailed eleven specific points on the operation and management of a hotel/motel. A second provision would provide for off-street parking. A memorandum to this effect was distributed to the Commissioners,

dated January 8, 2008. Following this submittal, the Commissioners received a letter from Jonathan Kessler regarding the proposed changes to the ordinance. The Kessler letter critiqued the memo that was sent to the Commissioners. Also some additional points were added to see if it would alter the Planning Commissioner's view on the proposal. After summary comments by the chairman, the Commission proceeded to review Jon Kessler's letter point by point.

Mr. Kessler's comments and questions read:

- "Be open to the public generally rather than a limited group" *What purpose does this statement provide? Certainly the definition does not intend that I could not rent my entire hotel property to one church group for a week? Maryland annotated code gives specific meaning to general public.*

The Commission feels that there is no conflict here and the language in the amendment does not intend to restrict rental by groups.

- "Contain a public lobby and guest registration office with guest rooms and suites" *Does the definition mean you need to have both rooms and suites? Should this be interpreted to mean that a hotel like Savage River Lodge where the lobby is quasi public and does not provide connecting access to the rooms or suites is prohibited?*

The Commission feels that there is no inconsistency in this wording. The Commission plans to add the words "and/or" instead of the word "and" to read ... "with guest rooms and/or suites".

- "Provide full time on site management, guest registration personnel, daily maid service and maintenance to all guest rooms and suites. *Is this intended to cause action against a hotel like Will O Wisp if they do not offer round the clock hotel services even though if may be a few short hours in the slow season or when the hotel is empty? The term "full time" should not be used if that is not literally intended.*

Mr. Nelson explained that the answer to this question is no because the Will O Wisp existed prior to enactment of the Ordinance. Other existing business of this type would also be grandfathered.

- Should the zoning code really be the vehicle to establish the number of rooms keys and how they are administered? *What does the county intend to do when room keys are not the mechanism that opens doors. The future will find RF technology, magnetic strip cards and almost certainly thumb print access. Do we really need a zoning ordinance that regulates away an owner's ability to use technology?*

The Commission believes that the Ordinance should add a definition for "room key" to include new key technology. The purpose of this language is only to limit subletting of rooms within a hotel/motel.

- Not have individual utility connections metered separately, including water, sewer and electric, to individual guest rooms and suites." *What is changed in the real world of hotel operations by cabins like those operated at Will O Wisp for decades. Those cabins have or may have separate utilities.*

Mr. Nelson explained that the purpose of the regulation is to make sure that these rooms are in fact hotel/motel rooms and are not being used as a full time residence, though with the proposed changes, full kitchens would be permitted.

- “prominent signage” *When the frontage of a property like Alpine Lodge has the use changed who will decide the codes intention of “prominent signage”?*

Mr. Nelson explained that the required sign would advertise the hotel use at a prominent location.

- “Maintain records for all guest rooms and suites, for at least the most recent two years, including names and addresses of guests and term of stay.” *Should the zoning code really be in the business of mandating recordkeeping when this section does not deal in any manner with who will use the information or even require that it be provided if asked? Who will have right to see the records?*

Mr. Nelson explained that the purpose for recordkeeping is for enforcement purposes only to insure the hotel would be open to the general public.

- “Contain sleeping accommodations in each guest room or suite with not more than two separate bedrooms and not more than two bathrooms and may contain a kitchen or kitchenette. The maximum size of any guest room or suite shall not exceed 1,000 sq. ft.” *I have been to many hotel rooms that provide in excess of 1000 SF rooms. This is an absurd limitation that will have grave consequences for future luxury accommodation needs at Deep Creek Lake. If the intent is to limit the number of guests in a room then I urge you to establish annotated code to define that operational limitation but do not make an arbitrary 1000 SF be the largest hotel suite that can be developed. This definition will kill the Aqua Mountain Resort hotel plan. My proposal has been approved by the Planning Commission and blessed by the Commissioners office with hotel suites that offer 1500 SF and the ability to sleep ten. Is a “kids cove” within a room going to be considered a bedroom? Is a loft without a door going to be considered a bedroom? What is a kitchen or kitchenette? If the whole purpose of these changes is to allow a hotel unit to have a kitchenette, should it be defined?*

Mr. Nelson stated that the intent is not to limit room size but to require supplemental land area requirements for larger hotel suites over 1,000 sq ft. Rooms that have less than 1,000 sq ft would only be required to have 1,000 sq ft of land area. After a question by Karen Myers, Mr. Nelson clarified that hotel rooms without a kitchen should not be subject to the land area size restriction.

- “Comply with a minimum lot or land area requirement of 1000 SF per room or suite.” *Section 401 of our code sets out dimensional requirements for all uses. It would not be wise to overlap the definitions 10th tab dealing with land use differently than it is section 401. Though Hotel/Motel is not listed in my copy of the zoning code the existing code requires the catch all - other uses - to have 10,000 or 20,000 SF for the use and no allocation is specified for per unit.*

Mr. Nelson explained that the requirement for hotel/motels is one acre, as provided in Section 401(D)1, but currently the ordinance does not require a minimum land area per room.

- Not be construed to include any building or structure defined as a multiple-family dwelling under this ordinance for the purpose of calculating minimum land area and off-street parking per room or suite. In the case of mixed uses, the required minimum lot area and parking requirements shall equal the sum of the requirements of the various uses computed separately. *This seems to be an intra office policy issue statement and should not be a part of zoning code.*

Mr. Nelson believes that the wording in the proposed amendment helps to clarify the accumulative land area issue.

Section 600 E.7 – Required Off-Road Parking Spaces - Hotels or Motels - One Off-Road parking space required for each room or suite having one bedroom and one and one-half off-road parking spaces required for each room or suite having two separate bedrooms. Plus one off-road parking space required for each full-time employee. *Deep Creek Lake zoning code is already very stiff in regulating parking for commercial interests. If you want to require reasonable parking that will allow developers to make efficient use of the precious little commercially zoned property that is in the regulated area, I urge you to use an average of the total sleeping capacity divided by the likely patrons per bus or car.*

Mr. Nelson feels that it would be difficult to determine the likely number of patrons per bus or car. Some members of the Commission feel that it is valid to consider the number of full time employees that may work different shifts. Full time employees could actually share parking if they work at different time, as with shift work. Mr. Nelson agrees and suggests that the words “per shift “ should be added to this section of the proposed amendment.

Mr. Kessler’s letter also proposes a new definition for hotel or motel to include “up to 12 transient guests”. The group believes that this should not be included in the definition.

Mr. Kessler proposes to list hotel/motel as a category in 401C and require hotels without kitchenettes or kitchens, as is currently listed as a one acre minimum land area requirement, without land area requirements per room. The Commission agrees to this clarification.

Mr. Kessler also proposes separate classifications with greater land area requirements for a “motel B and a motel C”, for rooms with kitchens and kitchenettes. The Commission does not consider these more stringent land area requirements to be necessary.

The Commission also does not feel that it is necessary to distinguish between a kitchen and a kitchenette as part of this proposed amendment to the Ordinance, as suggested by Mr. Kessler.

The Commission feels that the Variance process, before the Board of Appeals, could best handle any modifications to the parking standards.

Mr. Nelson notes that the term “dwelling unit” is also defined in the current version of the International Building Code that has been adopted by the county.

Bob Willet feels that the 1,000 sq ft room-size is being used to limit the number of occupants. He feels the best way to regulate this is by limiting the number of bedrooms. Mr. Nelson explained that the 1,000 sq ft room-size would allow up to 43 of these rooms on one acre. The units could have a full kitchen and two bedrooms. Units over 1,000 ft in size would have to meet the supplemental land area requirement of 4,800 sq ft per unit.

Kevin Potter noted that a lot of work has been put into this effort for at least four months to help make the zoning ordinance a better document.

Acting Chairman Ellington said that these changes would be made to the proposed amendment and forwarded to the Garrett County Commissioners, by a unanimous vote of 7 to 0. The commissioners would then schedule a public hearing, providing they agree to amend the ordinance.

B. General discussion on the Draft Chapters of the Comprehensive Plan.

Mr. Nelson gave an overview of the schedule for the Comprehensive Plan. Four additional chapters are now posted on the county web site. Drafts are available for chapters 6, 7, 8, and 10. There are three remaining chapters that are not completed: Chapter 5- Water Resources, Chapter 9- Housing and Chapter 11- Economic Development. The Water Resources element should be available in draft format by February 22.

The next public informational meeting will be held on Monday, March 3, at 7:00 pm, at the Garrett College Auditorium. This will be an opportunity for comments and questions. Written comments will be taken until March 21. By April 8, it is believed that a complete draft of the plan will be available for review by the Planning Commission and posted on the county web site. The consultants have suggested that the April meeting of the Commission be moved to April 16, to allow for possible acceptance by the Planning Commission, and begin the Clearing House review process. It is expected that the Clearing House review would take approximately 60 days. A combined public meeting by the Planning Commission and the County Commissioners could take place in mid to late July.

Mr. Nelson noted that the Greater Cumberland Committee is spearheading an effort to undergo a more comprehensive study on the surface and groundwater resources in the region. Allegany, Garrett and Mineral counties are undertaking this effort. The group is also exploring possible funding sources.

The Commission reviewed each chapter that was distributed. Chapter 6- Transportation is summarized in *Section 6.7 Policies and Actions* and the Commission reviewed the 14 specific actions. Copies of these chapters are on the County Web page.

Jane Avery suggested that an economic and environmental impact study should have been required for the Oakland Bypass. Mr. Nelson noted that the bypass is a State Highway project and an environmental impact was conducted, but an economic study was not, to his knowledge.

Chapter 7- Sensitive Areas policy is summarized in *Section 7.4 Policies and Actions* and reviewed line by line by the Commission.

There were no comments on Chapter 7 by members of the Commission or citizens.

Chapter 8- Community Facilities policy is summarized in *Section 8.10 Policies and Actions* and reviewed line by line by the Commission.

Comments on Chapter 8 include a request by Paul Durham to include a recommendation to enhance community facilities for recreation at the public schools.

Edith Brock suggested that there should be more parking at the Oakland library. Dr. Pope also suggests that there should be sidewalks on Memorial Drive and Broadford Road. Mr. Nelson notes that municipalities are working on updates to their own plan in concert with the county.

Ruth Beitzel noted that there is no mention of the planned Exhibit Hall that the county is planning in Thayerville.

Will Rozelle questioned the new proposed subdivision regulations in the Rural Resource district. Mr. Nelson noted that the county is proposing to have 66 to 80% of the farmland set aside for protection and applying a maximum lot size on the remaining lands instead of the minimum lot size now specified by the subdivision ordinance. The draft specifies a maximum lot size of one and one-half acre. The current density of one lot for every three acres would not change. The idea is to promote clustering of lots.

Judy Pittman notes that water quantity and water pressure on Marsh Mountain is a concern. Mr. Nelson noted that the water resources element of the Plan, Chapter 11, would address some of these issues.

Chapter 10- policy regarding the Mineral Resource Section is described in *Section 10.4 Policies and Actions* and reviewed line by line by the Commission.

There were no comments concerning Chapter 10.

C. Public Commentary- Discussion on regulation of windmills in Garrett County. Barbara Boone is concerned with the draft language in Chapter 3 of the

Comprehensive Plan, concerning industrial wind turbines in the county. She noted that Clipper Windpower, Inc was granted approval for 67 wind turbines in March of 2003, along Backbone Mountain. The plan has since been reduced to 40 turbines, but the size and the generation capacity was increased. The approval for the Certificate of Public Convenience and Necessity (CPCN) for this project runs out in March of this year, according to Mrs. Boone.

A second wind project is the Synergetics project along Table Rock. The Public Service Commission has not yet approved this project. Mrs. Boone stated that the hearing examiner recommended that the project be approved with a reduced footprint, due to impact on endangered species. Wayne Rogers, one of the principles of the company, was able to get a bill passed that virtually exempts wind projects, producing 70 megawatts or less, from the CPCN process, after a public, informational meeting.

Mrs. Boone feels that the draft language in the Comprehensive Plan, regarding wind projects should be removed. Specifically she feels that the statement "...on balance the county supports wind projects in the appropriate locations," should be removed. She also feels that wind turbines are in direct conflict with the county Heritage Plan.

Mrs. Boone added that a new wind power plan could be approved in a couple of weeks and there is no time to wait for approval of the Comprehensive Plan. She would like the Commission to move now to call for a moratorium of wind turbine development. Mrs. Boone also feels that the Commission could recommend height restrictions based on the county building code or by use of the county subdivision regulations.

Mr. Nelson explained that Article 66B of the Maryland Annotated Code is the only method the county could use to regulate these structures, based on an opinion by the county attorney. Mr. Nelson feels that it will take a "grass roots" effort by the citizens and organizations of the county to adopt countywide zoning, which would allow regulation of these wind turbine projects.

Jon Boone distributed photos of the proposed wind plants along with a model comparing the height of the turbines and a two-story dwelling. Because of the new State law, Mr. Boone said it is likely that there will be another dozen wind project applications in the next six months in the county. Mr. Boone said that projects will range from 28 to 35 turbines each and currently there is no oversight or regulation of these projects in Garrett County. He feels that there will be about 300 of these turbines in the county within the next couple of years. Each turbine will involve clearing of four to six acres and the construction of deep footers to hold the turbines in place. Mr. Boone said that the county has never conducted a public meeting about this situation and the Planning Commission and the County Commissioners have done nothing to date. He feels that only the local citizens and the Department of Natural Resources have proposed regulation of these structures. Mr. Boone feels that these projects will transform how people will see this area for generations, taking the

experience of the mountains away. Mr. Boone believes that once the production tax credits run out on these structures, in about ten years, the county will be stuck with them. Mr. Boone said that the projects would not replace a single coal-fired power plant, mainly because they provide no capacity. Other problems include noise, property devaluations, health issues and disruptions to wildlife. Mr. Boone feels that there is major sentiment to keep this kind of development out of the county, as evidenced by the meeting at Garrett College, last week. He feels that there will be major law suites over this issue. Mr. Boone stated that these turbines could not be placed in the Chesapeake Bay, where the real wind resources are, because there are regulations protecting those people and their property from such development.

Chairman Ellington said that there would be public hearings on this subject at a later date. Mr. Boone suggested that his organization would invite the appropriate parties to their own public hearing.

John Bambacus said that he understands the frustration associated with this subject and he feels that no one wants to answer any questions about why the public health and safety cannot be protected. Mr. Bambacus feels that the Commission has an essential obligation to protect the public health and safety. He believes that the Commission has the power to recommend to the Commissioners, as an independent citizen group, to correct this oversight. Former Senator Bambacus believes that there is a quick movement, to locate a great number of these wind turbines into the county. He feels that this is an emergency situation and he has asked the Commissioners to declare a moratorium on the sighting of any new wind turbines in the county, until more is known about the subject. Mr. Bambacus is unaware of any county in the country that has not passed regulations or ordinances to protect the health and safety of people around these wind power plants. Mr. Bambacus feels that something must be done to regulate these structures that are over 400 feet in height. He has requested copies of the contracts under the Freedom of Information Act, from the wind companies. The contract with the State of Maryland does not address health and safety or monetary rewards to the county or to private landowners. He has also requested copies of the contracts from Garrett County government for wind plants to be built on county property. Mr. Bambacus is interested in details of the contracts regarding impacts to public and private property.

A member of the Commission asked what they could do to facilitate this process of trying to regulate these structures. The group asked that a moratorium be placed on the construction of these turbines, until regulations can be developed. Mr. Bambacus feels that the Commission is accountable to the citizens of Garrett County and they should recommend to the Commissioners that something be done.

Paul Durham feels that the Comprehensive Plan is a work in process and it should be amended to exclude any language that would allow wind turbines. He feels that it is not appropriate to endorse wind turbines, even in "appropriate locations" without any authority or mechanism to regulate them. Mr. Durham said that his requests to the Commissioners were met with no response. He proposes that the Commissioners seek

regulatory authority to regulate these electric generating stations, specifically wind turbines. Mr. Durham said that the Planning Office was tasked with finding a way to regulate these turbines in 2005 and nothing has occurred. Mr. Durham also noted that the Board of Realtors voted today to ask the County Commissioners to develop regulatory standards for appropriate locations for wind turbines in the county.

Mr. Nelson notes that the county already has the authority to establish countywide zoning.

Dr. Joe Smith proposes that this committee recommend to the Commissioners that an immediate moratorium be placed on wind turbine development in the county.

At the request of the members of the audience, Mr. Nelson read the section relating to wind power found in Section 3.5.8 in the draft of Chapter 3, in the Comprehensive Plan found on page 3-38:

A wind power electricity generation project has been proposed along the ridge at the southern end of Backbone Mountain, one of several sites in Garrett County that are suitable for wind power because of the strong steady winds. As of 2007, no projects have been built in Garrett County, although wind power sites are in operation south of Garrett County in West Virginia. The use of wind power for energy has been controversial in Maryland. Concerns have been expressed by some people regarding impacts of wind power facilities on birds, bats, sensitive species, aesthetics and scenic views, and property values including impacts from noise. While the County acknowledges the potential negative impacts of wind power facilities, it also recognizes the benefits; especially those related to clean, sustainable power generation, and the socioeconomic and fiscal benefits to the County. On balance the County supports wind power at appropriate locations, provided any site-specific negative impacts can be mitigated.

The Planning Commission passed a motion unanimously, to remove the last sentence from Section 3.5.8.

The Planning Commission in a separate action passed a motion to recommend that the County Commissioners declare a moratorium on all wind turbine construction in the county. It is also recommended that the Commissioners should get in touch with the county legislative delegation today to request legislation to control the development of wind turbines in the county. This motion was passed by a vote of 5 to 2.

James Stanton believes that comprehensive zoning is necessary in Garrett County. He also feels that the Planning Commission decision to oppose windmills in the county supports the earlier decision by the Commissioners to oppose these projects on State lands. Mr. Stanton suggests that the county staff be directed to make an objective review of wind turbines, and develop criteria for their regulation and not approve any projects until this criterion is adopted.

D. Miscellaneous

1. **Deep Creek Watershed Zoning Appeals Cases** - The Deep Creek Watershed Board of Zoning Appeals will conduct a public hearing on Thursday, February 28, 2008, starting at 7:00 pm, in the County Commissioners Meeting Room, second floor, 203 South Fourth Street, Oakland. The Board will review the following docketed cases and hereby requests an advisory opinion from the Planning Commission for these cases:

- a. **SE-387**- an application submitted by Karen Myers/Spiker, LLC, for a Special Exception to allow the construction of an off premise, LED/LCD message sign on property owned by the applicant. This advertising sign will be located at 48 Mosser Road, tax map 42, parcel 446, and is zoned Town Center.

The Planning Commission recommends approval of this application by a unanimous vote of 7 to 0.

- b. **SE-388 and VR644**- an application submitted by Jerry Zimmerman on behalf of Garrett College for a Special Exception to allow the expansion of the college to add an Athletic and Recreation Center on Garrett College property. The college is also requesting a Variance to allow the construction of 218 parking spaces instead of the required 334 spaces. The facility is located at 687 Mosser Road and is zoned Lake Residential.

The Planning Commission recommended approval of the application for Special Exception by a unanimous 7 to 0 vote. The Commission also voted to recommend denial of the Variance from the parking requirements, by a vote of 6 to 1. Some members feel that the college already has a parking problem during special events.

- c. **VR-643**- an application submitted by Roger and Cindy Newman for a Variance to allow the construction of an attached garage to their existing residence, that would come to within 1.0 feet of a rear property line. The owner has purchased the buy-down from the State of Maryland. The property is located on 307 Maybury Lane, tax map 67, parcel 205, and is zoned Lake Residential.

The Planning Commission has no comment on this application.

- 1. **Minor Subdivisions** – Approved minor subdivisions have been included in the packet mailed to the Commission members prior to the meeting.
- 2. **Waivers Requests**- None
- 3. **Ag-land District Application BC-104** – Wendell and Ruth Beitzel have submitted an application to establish an Ag-land Preservation District. The

property is located along Accident-Bittering Road. The total size of the parcel is 84.5 acres and is located in the Bear Creek watershed. Mr. Nelson said parcel meets all of the requirements and the staff recommends approval of this ag-district. The Planning Commission recommends approval of the establishment of the district by a unanimous vote of 7 to 0.

E. Action on Planned Residential Developments (PRD) and Major Subdivisions

1. **Preliminary Plat- Whitewater Springs-** The developer, Robert P. Willet, submitted a preliminary plat for a 23-lot subdivision located off of Sang Run Road. The property is located on Map 41, Parcels 46 and 380 in a Rural land classification. The Planning Commission granted approval of this Preliminary Plat by a unanimous vote of 7 to 0.
2. **Preliminary Plat- Swan Meadows II-** The developers, John & Michael Dever submitted a preliminary plat for a 4-lot subdivision located off of G. Swauger Road. The property is located on Maps 84 and 90 and Parcels 67 and 14 in an Agricultural Resource land classification. The Planning Commission granted approval of this Preliminary Plat by a unanimous vote of 7 to 0.
3. **Revised Final Plat- Aspen Woods West-** The developer, Aspen Woods West, LLC, submitted a revised final plat for a 28-lot subdivision located off of Sang Run Road. The Planning Commission granted final approval for the original 33-lot subdivision on January 3, 2007. The property is located on Map 41, parcel 270 in a Rural Land Classification. The Planning Commission granted approval of this revised Final Plat by a unanimous vote of 7 to 0, contingent on the developer securing all required signatures on the Final Plat.

F. Next Scheduled meeting - The next regular meeting of the Planning Commission is scheduled for Wednesday, **March 5, 2008**, in the County Commissioners Meeting Room, at **1:30 pm**. Also the Commission will sponsor a public meeting on the Comprehensive Plan on Monday, March 3rd, at 7:00 pm, in the Garrett College Auditorium.

G. Adjournment- 4:15 pm.

Respectfully submitted,

William J. DeVore
Zoning Administrator

