

**GARRETT COUNTY PLANNING AND LAND DEVELOPMENT OFFICE**

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**MINUTES**

**The Garrett County Planning Commission** held its regular monthly meeting on Wednesday, April 16, 2008, at 1:30 pm, in the County Commissioners Meeting Room. Members in attendance at the meeting include:

Troy Ellington	Jeff Messenger	John Nelson-staff
Tim Schwinabart	Ruth Beitzel	William DeVore-staff
George Brady	Joe McRobie	
Tony Doerr	Edith Brock	

Also see attached list of guests in attendance.

1. Call to Order – By Chairman, Troy Ellington at 1:30 pm.
2. The March minutes were unanimously approved as submitted.
3. Report of Officers – None
4. Unfinished Business - None
5. New Business-

**A. Discussion regarding the proposed amendment to the Deep Creek Watershed zoning ordinance, submitted by Nancy Elizabeth Nimmich and Barbara Boone concerning regulation of industrial wind turbines.**

John Nelson, director of Planning and Land Development introduced the petition for amendment for the record. Mr. Nelson explained that the Zoning Administrator distributed the requested amendment along with the opinion from the County Attorney, concerning the amendment, to the Planning Commission members.

Barbara Boone submitted an addendum to the amendment that includes listing of 61 additional names supporting the amendment. The listing is in addition to the 210 names previously submitted with the original amendment

Mrs. Boone said that the group is here to protect the health and the welfare of the people of Garrett County. She feels that industrial wind turbines run contrary to

the goals of the Comprehensive Plan and also the Heritage Plan. Mrs. Boone feels the turbines are contrary to wording in several chapters of the Comprehensive Plan.

Nancy Elizabeth Nimmich also addressed the Commission in support of the amendment.

William Wantz, attorney who prepared the amendment, also addressed the Commission. Mr. Wantz feels that the wind turbines are a difficult planning issue and he has discussed the proposed amendment with County Attorney, Gorman Getty. Mr. Wantz believes that the county commissioners have the authority to enact Performance zoning to regulate turbines, under Article 66B, Section 10.01, of the Annotated Code of Maryland. Mr. Wantz suggests that Performance zoning could be enacted, even in an area where Euclidian zoning now exists. He believes that this type of zoning can be used for the preservation of natural resources and that local governments are encouraged to use Performance zoning. He also feels that Performance zoning can be used as a replacement for traditional zoning and that there is no restriction on the ability of Garrett County to exercise this authority, as authorized by the General Assembly of Maryland.

As for the question of moratorium, the attorney feels that a Lake Tahoe, California, case is similar to the question of wind turbines in Garrett County. According to Mr. Wantz, planners in the Tahoe region enacted a moratorium in order to buy time to consider all of the implications that over development was having on Lake Tahoe. Mr. Wantz cautioned that after construction begins, the builder will acquire "vested rights" that will allow the construction of the project, regardless of new regulations. Mr. Wantz suggests that a moratorium in Garrett County could be site specific and limited to only the wind turbines, based on the Tahoe Supreme Court case. The moratorium could last as long as is reasonably necessary to make studies that would answer the important questions, dictated by the issues.

Mr. Wantz believes that his proposed amendment is only an initial starting point to regulate wind turbines and the Commission could build on his proposal. Mr. Wantz suggests that the Commission enact his proposal to prohibit turbines and then watch this technology unfold in neighboring communities, counties and states. He feels that the amendment could then be repealed, if future evaluation shows that it would be prudent to do so.

Dr. Pope feels that this is an urgent situation and that some of the wind turbine permit applications are not complete and unclear regarding the boundaries and extent of the disturbance. Dr. Pope observed that nearby houses are not shown and that the windmill companies tend to locate windmills toward the boundaries of leased property. According to Dr. Pope, proposed windmills in the Kelso Gap area are located within one-half mile of homes. He feels that either zoning or a

moratorium is needed at this time. Dr. Pope feels that the county needs to know more information and have more inspections before these projects should proceed. Dr. Pope believes that one of the turbine companies is having problems with their turbines. He notes that the owners of the property have been clearing the land in preparation for the wind machines.

A member of the Commission questioned whether the process can be stopped if money has changed hands. Mr. Wantz assured the Commission that as long as construction has not begun the process could be stopped, because Maryland is considered a "late vesting state". He feels projects such as these could be stopped, up until the developer makes a substantial beginning to the improvements. The amendment would apply to the proposed use of the property, normally 10 days after enactment, except for projects that have a physical beginning. The attorney noted that developers or landowners might have clauses in their agreements to address changes in zoning, up until commencement of the construction process. He further noted that demolition of the wind turbines could be very expensive to the landowner if they are not properly protected by contract.

Chairman Ellington noted that the responsibility of the Planning Commission is to provide a report containing their recommendation on the amendment to the County Commissioners. Mr. Ellington further noted that the county attorney has advised that "Performance Zoning" cannot be enacted outside of the territory of the zoned area, which in this case is the Deep Creek Watershed. Mr. Ellington feels that it is inappropriate to recommend an amendment that the county attorney has said to be not legal. Mr. Ellington made a motion that the Planning Commission does not recommend the adoption of the amendment to the Deep Creek Watershed Zoning Ordinance as proposed by petitioners Nimmich and Boone, based on the advice of the county attorney. The motion was passed by a vote of 4 to 3.

After the vote was taken, further discussion centered on how to control the proliferation of wind turbines throughout the county. The Chairman suggests that the Commissioners place a referendum question on the November ballot for a vote on the subject of countywide zoning.

Barbara Boone said that the Public Service Commission has scheduled a decision on the Criterion wind project for 28 turbines for next Wednesday and time is of the essence. Mrs. Boone feels that comprehensive zoning will take years. The group said they have been working to regulate these projects for about six years.

Mr. Wantz concurs with the suggestion to recommend countywide zoning to the commissioners, with a renewed request for a moratorium on industrial wind plants.

Chairman Ellington made a separate motion to have the Commissioners consider the subject of countywide zoning and have the question placed on the November ballot for referendum. The motion was passed by a vote of 6 to 1.

George Brady proposed a motion that the Planning Commission ask the Commissioners to consider the subject of countywide zoning and that it be placed on the ballot for referendum, this November, along with a renewed request for a moratorium on commercial/industrial wind turbines. The motion was denied by a vote of 4 to 3.

John Bambacus stated his opinion that with the passage of Senate Bill 566 and the action of the Commission today, the citizens of Garrett County have no protection what so ever against industrial wind turbines.

## **B. General discussion and determination on the Final Draft Chapters of the Comprehensive Plan.**

Mr. Nelson reviewed each of the chapters, one at a time, noting the revisions that have been made to the draft chapters. Chapter 2 has minor revisions on page 2-8, relating to the number of jobs in the county. Chapter 3 has a map revision on page 3-10. The Nature Conservancy property has been added to the Rural Resource category. Page 3-11 has been revised to reflect the acreage changes to the land classifications that have been made to the map. A major policy change is shown on Page 3-14 whereby the plan now only recommends a maximum lot size of 1.5 acres in AR and RR instead of requiring a maximum lot size of 1.5 acres. This will allow the landowner or developer to create lots of any size, at the same density of one unit per three acres, with the caveat that the set aside land area of 80% to 66%, be specified first. Criteria for the set aside land was also added to the policy change. Sketch plats will also be submitted for any land development in the Agricultural or Rural Resource areas, to confirm the set-aside area.

Mr. Nelson explained that with the set aside preservation area approach, productive timber or agricultural land would be set-aside at the rate of 66 to 80 %. For example, with a 100-acre tract, between 66 and 80 acres of land would stay in productivity. The remaining 34 to 20 acres could be divided into lots (up to 33 lots based upon density restriction) with no restriction on the size of the lot, in the AR and RR areas. The maximum lot size of 1.5 acres would only be a recommendation.

Mr. Nelson explained that changes on Page 3-21 are a result of the reduction of the acres in the Rural Resource area. Chapter 4 changes include a revision on page 4-17 regarding traffic signals and the MD Route 495 corridor. Page 4-26 includes an accounting of the recommendations to the 2004 Deep Creek Planning and Evaluation Study, including limitations on Variances to the Board of Appeals. Page 4-36 includes a proactive stance for management and enforcement. Page 4-37 under Policies and Actions includes limitation on construction material, etc.

Chapter 5 on page 5-9 includes changes to the draft plan regarding the recharge rate based on MDE figures. Page 5-27 has changes under Policies and Actions that includes additional actions including natural gas refracting activities and stormwater management. Chapter 6 has no major changes. Chapter 7 on page 7-10 includes additional language to recognize ridgelines as “sensitive areas” in need of protection. In Section 7.2.7, wind turbines are discussed and a statement notes that they “could be incompatible with aesthetics, scenic quality and the rural character of the county”. On page 7-13, a new section has been added with a discussion concerning ridge top development and impacts from wind turbines. A recommendation for regulatory controls is also included. Also discussed is the policy of amending the Sensitive Areas, Subdivision and Zoning ordinances to establish a framework for control.

Barbara Boone feels the Commission’s previous decision to not enact countywide Performance zoning and against the moratorium on industrial wind plants, runs contrary to the language of the Comprehensive Plan, especially in Chapter 7.

In response to a question from Mrs. Boone regarding the timing of these changes, Mr. Nelson noted that he has budgeted to upgrade the Zoning, Sensitive Area and Subdivision ordinances for fiscal year 2009. He predicts that this would take from six months up to a year from the date a work program was initiated. Mrs. Boone believes that by the time any regulations are enacted to control industrial wind turbines, say by July 2009, there could be hundreds of these turbines already started or built, in the county.

A member of the Commission questioned what right the Commission has to stop a landowner from doing what they want to with their property. Mrs. Boone replied that all laws proscribe what we can do with our property and these laws are for the purpose of communal living. Mrs. Boone feels that when personal property rights could injure someone else, then there needs to be a law to protect the community from the individual.

Mr. Nelson reiterated that developing protective measures through the Sensitive Areas Ordinance may take some time, but if enacted, could regulate these types of development on ridge tops. The group against the industrial wind turbines encourages the county government to act quickly to enact this amendment to the ordinance.

Mr. Nelson noted that changes to Chapter 8 include the reference to the new exhibit hall to be constructed at the fairgrounds in McHenry. New wording was also added on page 9-4, at the suggestion of the Board of Realtors, concerning the wide range of the cost of land on rural building lots. Language was also changed on page 9-8 at the request of Community Action concerning the Workforce Housing Plan. Chapter 10 on page 10-2 was changed to add a section regarding the county’s natural gas production. Chapter 11 has a minor change to note that Adventure Sports has one of two whitewater courses in the country.

Mr. Nelson encouraged the Commission to accept the revised plan as their final draft Garrett County Comprehensive Plan for submission to the State Clearinghouse review process. A motion was approved to accept this as the final draft plan by a vote of 7 to 0.

James Stanton stated his opinion that there are areas that the Commission may be at odds with the county commissioners, but he would not want to slow the process of getting the plan to Clearing House. An example would be that the Commission might want to express the concern that the rest of the county did not receive as much attention as Deep Creek. A second example is, in Mr. Stanton's opinion, there is a concern in the agricultural community about the impact of the plan policies. Thirdly, there is a question about the use of private land versus public land. Also he feels that the density of the industrial wind turbines should be a legitimate concern of the Planning Commission.

### **C. Miscellaneous**

**1. Deep Creek Watershed Zoning Appeals Case** – To be held on Thursday April 17, 2007, at 7:00 pm. at the County Commissioners Meeting Room.

**a. SE-389** - an application submitted by Silver Tree Inn for a Special Exception permit to allow live, outdoor entertainment at a tavern known as the Harbor Bar. The property is located at 567 Glendale Road, tax map 58, parcel 740 and is zoned Town Center.

After discussion, the Commission recommended that the Board consider noise mitigation techniques and also limiting the hours of operation for the entertainment. The recommendation passed by a vote of 7 to 0, for this request for Special Exception.

**2. Minor Subdivisions** – Approved minor subdivisions have been included in the packet mailed to the Commission members prior to the meeting.

**3. Waivers Requests-** None.

**4. Ag-land District Application SY-108– Leroy and Norma Bolding** have submitted an application to establish an Ag-land Preservation district. The total size of the parcel is 158 acres on the Garrett Road. Mr. Nelson said the parcel meets all of the requirements and the staff recommends approval of this district. The Planning Commission feels that the application is consistent with the Comprehensive Plan and recommends approval of the establishment of the ag-district by a unanimous vote of 7 to 0.

**Ag-land District Application DC-107–** Chris and Clara Fitzwater has also submitted an application to establish an ag-land preservation district. The total size of the parcel is 155.79 acres and is located along Route 495, near the entrance to Sky Valley Road. Mr. Nelson stated that the parcel meets all of

the requirements and the staff recommends approval of this agricultural-district. The Planning Commission feels that the application is consistent with the Comprehensive Plan and recommends approval of the establishment of the district by a unanimous vote of 7 to 0.

**Ag-land District Application BC-109**– Damon and Lori Schmuck has submitted an application to establish an Ag-land Preservation district. The total size of the parcel is 100.76 acres, in the Bear Creek area, on the Mitchell Rush Road. Mr. Nelson believes that the parcel meets all of the requirements and the staff recommends approval of this district. The Planning Commission feels that the application is consistent with the Comprehensive Plan and recommends approval of the establishment of the ag-district by a unanimous vote of 7 to 0.

5. **Discharge Permit Application –Garrett County Sanitary District-** renewal of an application to discharge 125,000 gallons per day, from the Cranesville wastewater treatment plant. The Commission requested that Mr. Nelson prepare a recommendation of approval to the Maryland Department of the Environment by a motion of 7 to 0.

6. **Open Pit Mining Operations-**

- a. **Savage Mountain Minerals-** Application has been made to the Maryland Bureau of Mines by Savage Mountain Minerals, for a 54-acre surface mine northwest of Westernport on the east side of Aaron Run. Moran Coal Company owns the surface and mineral. The Commission has no comment on the application.
- b. **Moran Coal Co.-** Application has been made to the Maryland Bureau of Mines by Moran Coal Company, for a 25-acre surface mine on the west side of George’s Creek, northwest of Westernport. Moran Coal Company owns the surface and mineral. The Commission has no comment on the application.

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

1. **Preliminary Plat- Swagat Hotels-** The developers, Swagat Hotels LLC, submitted a Preliminary plat for a one-lot commercial subdivision located off of Deep Creek Drive. The property is located on map 41, parcel 54 in a Town Center zoning district. The Planning Commission granted approval of this Preliminary plat by a unanimous vote of 7 to 0.
2. **Preliminary Plat- Mountain Landings-** The developers, Aviation Properties Inc. submitted a Preliminary plat for a 14-lot subdivision located off of Pysell Road. The property is located on map 42, parcel 9 in a Rural land

classification. The Planning Commission granted approval of this Preliminary plat by a unanimous vote of 7 to 0.

- 3. Final Plat- Swan Meadows II-** The developers, John & Michael Dever, submitted a Final plat for a 7-lot subdivision located off of G. Swauger Road. The property is located on maps 84 and 90, parcels 67 and 14, in an Agricultural Resource land classification. The Planning Commission granted approval of this Final plat by a unanimous vote of 7 to 0, contingent on approval of homeowner documents and submission of the bond for the road improvements.
  - 4. Final Plat- Thousand Acres Phase II-** The developer, Appalaichan Investment Properties, submitted a final plat of the roads and common areas in this 150-lot cluster development located along several new and realigned roads in the Thousand Acres development. No new lots are created by this plat. The property is located on map 67, parcels 785 and 780, in a Lake Residential zoning district. The Planning Commission granted approval of this Final plat by a unanimous vote of 7 to 0.
- F. Next Scheduled meeting -** The next regular meeting of the Planning Commission is scheduled for Wednesday, **May 7, 2008**, in the County Commissioners Meeting Room, at **1:30 pm**.
- G. Adjournment-** 4:15 pm.

Respectfully submitted,

William J. DeVore  
Zoning Administrator

