

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 6, 2011, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Dana Kennell	Paul Durham
Tony Doerr	Eric Robison	Kathleen Meagher
Bruce Swift	John Nelson-staff	Larry Smith
Gary Fratz	William DeVore-staff	Don Shilobod
Bruce Swift	Steve Friend	Richard Skipper
George Brady	Jason Dilley	Elsie Slagle
Bob Gatto	Ronald Dilley	Richard Helbig
Gregan Crawford	Jerry Plauger	Angie Brant
Mark Gradecak	Tom Stack	Donald Riley

1. Call to Order and Introduction of Guests – By Chairman 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. Further discussion and action on Plan Amendments regarding ridgelines as a sensitive area in need of protection.

Chairman Ellington summarized that this issue was previously discussed and public comments received, at a joint public hearing of the Commission and the Garrett County Commissioners on March 8, 2011. Mr. Ellington noted that the record was kept open for an additional two weeks after the public hearing to allow further written public comment. Additional letters have been received and reviewed by the Commission. The chairman noted that further public comment would not be accepted before action is taken but questions concerning point of order items are acceptable. A public comment period concerning the Plan Amendments would be offered after any action is taken by the Commission.

Mr. Ellington notes that the amendments to the Comprehensive would reinstate previous language that was included in a 2008 draft of the Plan, endorsed by

unanimous vote of the Planning Commission, but was removed by the previous Board of County Commissioners. Mr. Ellington noted that any changes to the Sensitive Areas Ordinance or any other ordinances would also be subject to additional public hearing processes and approval by the Planning Commission and the County Commissioners.

Tony Doerr reiterated that this exercise will not create law and will only be a policy change to the Plan to allow for further review of the process. Mr. Doerr further notes that this change to the Comprehensive Plan is not the implementation of zoning.

Bruce Swift clarified that any change to the Plan would allow for further discussion of setbacks and other possible regulation of wind turbines.

Mr. Nelson notes that the proposed Bill, in the House and Senate that would have provided the authority for the county to establish setbacks and provide for decommissioning of wind turbines, has died in Committee. The Bill would not have authorized height limitations for the structures, but the setback distance would have been tied to the height.

Steve Friend asked if the section to be struck from the Plan concerning landowner's rights was part of the original recommendation to the Commission. Mr. Ellington stated that he requested the deletion of that language for clarification purposes, and it was not part of the original 2008 Plan language that was recommended to the Commissioners, by the Planning Commission in 2008.

Others in the audience suggest that according to letters that were submitted during the comment period, the overwhelming majority were against the proposed changes to the Comprehensive Plan. Mr. Nelson confirmed that the letters posted on the internet were about 71 to 29 percent against insertion of the new language. Some believe that the issue should be decided by a county wide referendum, not by the Planning Commission. Others feel that their rights as landowners are being taken away with out due process, during the midst of an energy crisis. Mr. Dilley notes that some of the form letters that were generated against the Plan amendments were from the Garrett County Farm Bureau, which has over 200 members.

Before the vote was taken, the Board agreed unanimously to decide on the amendments at the current meeting. The language to be changed was read by the Chairman. The Commission did not specifically add Four Mile Ridge and Elbow Mountain to the text of the amendment. Language on page 7-10 in the 2008 draft would be reinserted to read as follows:

Section 7.2.7 Ridgelines

"This Comprehensive Plan recognizes ridgelines as a sensitive area in need of protection. As described above, Garrett County is traversed by the northeast-

south-west ridges of the Appalachian Mountains. These ridges contribute to the aesthetics, scenic quality and overall character of the County and as described in Chapter 11 (Economic Development), help attract visitors to the county who are vital to the health of the tourism sector of the local economy. Major ridgelines in Garrett County include Backbone Mountain, Big Savage Mountain, Meadow Mountain and Negro Mountain.”

The next paragraph should include the sentence: *“Ridgelines are not otherwise protected.”*

The final paragraph should read: *“Outside the Deep Creek Lake Watershed, until recently, development on ridgelines was limited to fire towers, telecommunication towers and a few scattered homes, development that occasioned little concern. Since 2003, three wind power projects (clusters of wind turbines) have been proposed, with wind turbines over 400 feet high. These proposals have focused attention on the potential for the large scale use of ridgelines for wind power development that could be incompatible with the aesthetics, scenic quality and rural character of the County.”*

Language on page 7-15 in the 2008 draft, under Section 7.3.1 Future Growth and Development would be reinserted after the fifth paragraph to read:

“The widespread use of ridge tops for power generation has the potential to negatively affect the County’s scenic qualities and, as a potential to result, the County’s economy. Additional regulation may be necessary to avoid such negative impacts. Specifically, this Comprehensive Plan recommends the County establish a framework for regulatory control of ridge top development through subdivision, sensitive area, and possibly, zoning controls. A number of questions should be considered as part of this framework:”

- *“What kinds of environmental impacts does the state regulate, whether or not a project needs a Certificate of Public Convenience and Necessity (CPCN) from the state?”¹⁶*
- *What are the best mechanisms for the County to regulate ridge top development: subdivision, sensitive area, zoning or a combination? What might be a suitable basis for regulation?” Aesthetics, scenic views, and viewsheds, proximity to other sensitive areas, such as steep slopes, and /or proximity to existing communities?*
- *What should the county regulate? Typical zoning controls address location, height, noise, setbacks and buffers.*
- *Should the county allow wind turbines in some areas, while (sic) and disallow them in other areas? On what basis?*
- *If the County regulates commercial wind turbines, provisions should still exist to allow individual turbines that serve one or a few houses or businesses?*

- *If the County were to opt to regulate wind turbines, what kinds of mitigation measures could the County adopt in addition to state requirements?”*

¹⁶ 2007 state legislation exempted projects under 70 MW from the need for a Certificate of Public Convenience and Necessity.

Language on page 7-16, in the 2008 draft, under Section 7.4 Policies and Actions would be reinserted after the final numbered paragraph to read:

11. “Establish a framework for regulatory control of ridgetop development through subdivision, sensitive area, and possibly, zoning controls. In establishing the framework, consider the questions and issues on Section 7.3.3 in this Chapter.”

The Commission also recommends the removal of the language that was inserted by the previous Board of Commissioners in the place of the initial language proposed by the Commission in Section 7.3. The Commission believes the Plan should be amended to delete: *“The County further acknowledges property rights of the owners of land that is suitable for wind power facilities to use their property for that purpose”*.

And delete...”The Board of County Commissioners has expressed its intent to seek legislation for authority to establish minimum set-back requirements for wind turbines from property lines and from existing residential structures.”

A motion was made by Tony Doerr to implement the changes to the Garrett County Comprehensive Plan, as was read into the record. The motion was seconded by Chairman Ellington. The Planning Commission granted approval of the newly revised language of the plan by a vote of 3 to 2, with one abstention. The proposed amendment will be forwarded to the County Commissioners.

Commissioner Gatto had previously abstained from participation on this issue since he will be voting on the proposed change to the Comprehensive Plan as a County Commissioner.

Some members of the audience expressed displeasure with the vote and believe that this language is a violation of their rights as property owners. Also some feel that since the majority of the letters were against the new language, the Commission should reconsider and vote against the amendment to the Comprehensive Plan. Some also believe that the new language is the beginning of a prohibition of wind turbines in the county.

In answer to a question from the audience, Mr. Nelson explained that any wind company could still apply for a building permit, grading and stormwater permits for constructing wind turbines, before the adoption of any new county regulations

for turbines, since such regulations would probably be months away. Some in the audience feel that the issue of wind turbines should be put to a vote in the county.

In answer to a question from guests at the meeting, Chairman Ellington explained that Planning Commission members are appointed by the County Commissioners and the chairman is elected by members of the Commission.

B. Discussion on Draft Annual Report and determination of a local goal to increase growth in priority funding areas.

Mr. Nelson stated that an Annual Report is now required by the Office of State Planning to measure the progress of growth in Priority Funding Areas (PFA's). Many feel that this may lead to State legislation that would require more growth within PFA's.

Mr. Nelson notes that a second version of a rough draft has been distributed to the members of the Commission. The director notes that the reporting requirements have been in Article 66B for years. In 2009, the adoption of the Indicators Bill requires the Planning Commission to report on the amount of new growth that has taken place both inside and outside of PFA's. This information may be used for the establishment of baseline data that may be initialized as a guide for future development. The State's policy is to reduce the amount of growth outside of PFA's, as is clearly stated as a goal in Article 66B. The Planning Commission is charged with establishing goals of their own, to improve the rate of growth in PFA's. Mr. Nelson believes that Garrett County has one of the lowest percentages of growth in PFA's because only about three percent of the county's total land area can be designated as a PFA because of the PFA criteria established in current law.

Mark Gradecak has prepared the initial draft of the Annual Report that should be submitted to State Planning, by July 1. Chairman Ellington notes that this report could have ties to the amount of funding the county will receive in the future for infrastructure, especially if the county does not meet certain Smart Growth goals.

Mr. Gradecak stated that he was a regional planner with the Maryland Department of Planning and he retired from that office in 2008. Mr. Gradecak explained that the State long ago identified schools, roads and water and sewer systems as major expense items. The State adopted policies to limit new construction while keeping up with the expense of regular major repairs and updates, in order to reduce costs. A goal was also developed to keep growth near existing facilities.

Mr. Gradecak believes that it is important for the Commission to consider why growth in PFA's has been slow in the past and to consider that there may be no changes in the market to allow that to change, in the near future. Mr. Gradecak feels government has little control over this type of development and it may be best to be conservative in predicting any possible goals for future development in

PFA's. He also notes that that this goal will be revisited each year and that this goal could be adjusted accordingly, at that time.

Mr. Nelson noted that Duane Yoder, who is a Western Maryland representative on the Sustainability and Growth Commission, is taking a proactive approach to try to modify the criteria for PFA designation. Especially problematic is the criteria that require the area be served, or planned to be served, by water and sewer service. Paul Durham of the Board of Realtors volunteered their data concerning the number of lots that are on the market within PFA's, along with the number that exist outside of PFA's. This information could be useful in determining growth potential within PFA's. Mr. Nelson believes that this information may help to explain why our targets may be lower than other jurisdictions.

The Commission decided to combine subdivision and permit activity as part of the newly established goal. The Planning Commission set the goal for projected growth, located within a PFA, to approximately ten percent, by the year 2020. Currently, the county is between 7.4 and 10 percent of activity within a PFA. Mark Gradecak will enter an explanation of the county goal into the Annual Report and hopes to bring the draft back to the Commission for its next regular meeting. The Commission is not required to have a hearing on the report but is required to agree on the content by July 1, 2011. The report will be submitted to the County Commissioners and the Maryland Department of Planning for their comments.

The Planning Commission endorsed the ten percent goal in the draft of the Annual Report, by a unanimous vote of 6 to 0.

C. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases –

- a. SE-409- Continued-** an application submitted by Tim Stark, of U S Cellular, for a Commercial Communications Antenna. The proposed antenna is located at 1090 Turkey Neck Road, on property owned by Henry, E. Schmidt, tax map 74, parcel 3, and is zoned Agricultural Resource (AR). The Commission voted to support the construction of the tower, unless a satisfactory, alternate location is found, by a vote of 5 to 0.
- b. SE-410-** an application submitted by Blue Moon Rising Properties, LLC, for a public or private trade or professional school. The property is located at 210 Green Way, tax map 50, parcels 51 and 455 and is zoned Lake Residential 1. The Commission offered no comments on the application.
- c. SE-411 -** an application submitted by James and Gail Nightingale for a Special Exception permit to construct an indoor boat storage building on

their property. The building would be located at 6321 Rock Lodge Road, tax map 43, parcel 154, and is zoned Agricultural Resource. The Commission offered no comments on the application.

d. VR-681 - an application submitted by Frederick and Roberta McCarthy for a Variance to allow the construction of a detached garage to within 2.0 feet of the side property line. The property is located at 422 South Shore Road, tax map 59, parcel 162 and is zoned Lake Residential 1 (LR1). The Commission offered no comments on the application.

e. VR-682 - an application submitted by William Lovett for a Variance to allow an addition to a residence to within 33.0 feet of a rear property line. The property is located at 2233 Turkey Neck Road, tax map 67, parcel 608 and is zoned LR1. The Commission offered no comments on the application.

2. Minor Subdivisions – Approved minor subdivisions, if any, have been included in the packet that was mailed to the Commission members prior to the meeting.

3. Waivers Requests- John Body Waiver- Mr. Body is seeking a waiver to subdivide his property located at the corner of Sugar Maple Lane and Crabtree Bottom Roads. The property is designated tax map 41, parcel 205 and located in a Rural land classification. The waiver is required because the subdivision of the 1.98-acre parcel would result in two lots, each having a land area slightly less than the one-acre minimum required in the Rural land classification. After discussion, the Commission granted approval of the waiver request by a unanimous vote of 6 to 0.

4. Mining Permit Applications –None.

D. Action on Planned Residential Developments (PRD) and/or Major Subdivision plats- None

E. Next Scheduled meeting - The next regular meeting of the Planning Commission is scheduled for Wednesday, **May 4, 2011**, in the County Commissioners Meeting Room, at 1:30 pm.

F. Adjournment- 4:00 p.m.

Respectfully submitted,

William J. DeVore
Zoning Administrator

