

GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT

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MINUTES

The Garrett County Planning Commission held its regular monthly meeting on Wednesday, July 10, 2013, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Bill Weissgerber	Bob Gatto
Tony Doerr	Tim Schwinabart	John Nelson-staff
Jeff Messenger	George Brady	William DeVore-staff

Also see the attached list of guests that attended the meeting.

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

A. Review and Discussion-Petition to amend the Deep Creek Watershed Zoning Ordinance submitted by William Meagher of Lakeside Commercial Properties, LLC.

Chairman Ellington commented that the Planning Commission desires to hear both the pros and cons of the issue of amending the zoning ordinance regarding boat rentals. The Chairman noted that the Commission follows Roberts Rules of Order for small boards, which is much less formal than Roberts Rules for larger boards. Mr. Ellington notes that this is not a public hearing and that there will not be a transcript of this meeting.

John Coyle, an attorney representing Bill Meagher of Lakeside Commercial Properties, LLC, gave an overview of the request for the text amendment to the zoning ordinance. The request would be to amend the ordinance to add a new category of use, under Section 157.024(c) 23 to read: boat rental including boat rides and/or boat tours as a separate service business and not offering any other services associated with a marina. The use would be permitted in the Town

Center-TC and the Commercial-C zoning districts and by Special Exception in the Town Residential-TR, Commercial Resort 1 and 2-CR1 and CR2 zones.

Section 157.041 (c). 10 would also be amended to include a change to the table of Dimensional Requirements for Principal Uses to clarify that the boat rental service business would require the same minimum land area that the sale or rental of recreational vehicles use requires which 10,000 sq. ft., per Section 157.041 (c).10 to read: “Sale or rental of recreational vehicles, including boat rental as a separate service business. The use would require a minimum land area of 10,000 sq. ft. in any district where it is permitted, except as provided in 157.041(e).3, which requires 6,000 sq ft. per use. All yard setbacks would remain the same, as they currently exist.”

Mr. Coyle believes that the intent of the zoning ordinance is to promote general welfare and asserts that the Ordinance is intended to benefit more than existing business owners and business entities. He notes that these properties are located on Deep Creek Lake which is owned by the State of Maryland. The goal of the State is to increase public access to the Lake, which currently has very limited access. Mr. Coyle contends that another benefit to the public and the general welfare would be to increase competition. Mr. Coyle believes that there are limited numbers of marinas at the lake and zoning should not be used to limit competition. He notes that the current marina definition is very broad and the text amendment would create a limited business opportunity that would generate minimal impact on the lake.

Mr. Coyle asserts that the 10, 000 sq. ft. and 6,000 sq. ft. standard for a boat rental use in a shopping center is logical because limited service requires less space. Any of these entities also must comply with all DNR requirements regarding these types of lakefront businesses

Mr. Coyle explained that usually the uses in a shopping center complement each other so that peak times for each use are spread out and parking can be shared. A marina use under the existing definition can be located in any zoning district, including Lake Residential 1 and 2 zones, as long as the marina meets the size requirement. This amendment proposal only permits boat rental activity in Town Center and Commercial zoning districts and by Special Exception in the Town Residential, Commercial Resort 1 and 2. The attorney feels that this is an appropriate limitation for this use.

John Coyle explained that there was an evaluation conducted concerning the impact of the previous text amendment. Mr. Coyle believes that the study shows that there are 36 properties that will fit into this category, 24 of them are already developed, and nine of the properties can already qualify as a marina. This would leave three potential sites. Other factors to consider are the public demand for such a business and the need for a substantial investment to be made in order to accomplish this and the willingness to use the property for this use.

The owners of the nine properties identified as potential marinas have chosen not to use their property as a marina. Lakeside LLC has been willing to dedicate part of their property. As a result of this substantial investment, there has been an increase in business, employment and the general welfare in the area. The attorney asks the Commission to make a favorable recommendation and to enact the proposed amendment to the Ordinance. Mr. Coyle notes that right now the Lakeside business is idle, awaiting some positive action from the County Commissioners. He believes that the business has shown that there is a demand for such a business and allows the general public to access the lake.

Phil St. Moritz, the owner of Bill's Marine Service, LLC, addressed the group concerning the proposed amendment. Mr. St. Moritz believes that this type of operation is not needed at Deep Creek Lake. He believes the location to be unsafe and too congested. He notes that the Lakeside watercrafts do not have a reverse gear and the owner has young people carrying gas to supply the personal watercraft. Mr. St. Moritz is concerned with the integrity of the lake. Mr. Moritz has and continues to invest millions of dollar at Deep Creek and he believes that Lakesides investment was not that substantial, and the real concern is safety.

Ed King submitted a letter from Roger Titus and presented Mr. Titus' views of the proposed boat rental business. Mr. Titus asks that the Planning Commission not to recommend this change in the ordinance to the County Commissioners. Mr. Titus also wants it known that the Property Owners Association (POA) is not "at war" with the commercial sector at Deep Creek Lake.

Mr. King agrees with the court order because he feels there was no substantial change to the character marina industry at Deep Creek. Secondly, he believes that there was no indication that there was a mistake made in the original zoning ordinance. Mr. King also believes that there was no hardship shown by the applicant. He believes that the marina industry did not ask for this change, nor was there a movement from the general public or the Chamber of Commerce. Mr. King believes that the request came from a single person for a single site. Mr. King feels that an ordinance change should not be made for an individual. Ed King believes that Lakeside is only requesting the revenue side of the marina business. Other capital investments of the existing marinas are being overlooked. He feels that the new request has created dissidence in the marina industry. Mr. King likes Bill Meagher personally and believes that he is an asset to the community, but he feels the ordinance should not be changed because of Mr. Meagher's standing in the community.

Bob Nickel, general manager for Bill's Marine Service believes that the current marina owners are not collaborating to eliminate the competition. The manager notes that Mr. St. Moritz has spent an exuberant amount of money based on the way the ordinance was written when he purchased the business in 2003. He believes that the safeguards written into the ordinance are necessary. Mr. Nickel agrees with Ed King that the proposed boat rental company would take the

revenue portion of the business. Mr. Nickel believes that two acres is needed to run a marina to accommodate the service and labor portion of this use. Mr. Nickel supports business and small business but he believes that they have to be on the same playing field and be fair to the existing businesses. Bob Nickel feels that the new amendment will be “spot” zoning and does not understand why the proponents have included the word “service” business in the text change amendment, when no marina services are offered. He feels that marinas, without service, should not rely on others to provide gas and service for their business.

Mr. Nickel notes that no one has asked his opinion of how this zoning change would affect his marina. The marina operator believes that the new boat rental business is not safe and Lakeside is trying to by-pass the headaches that are associated with the marina business. Mr. Nickel believes that the ordinance will have little merit if it is changed often, and so easily, and could be a detriment to new business in the county. His records show that his business is down 10 to 15 percent this year, due in part to the new rental business.

Carol Jacobs, president of the Aquatic Center, Inc., which is a power sports dealership in McHenry presented a three page summary of her comments concerning the proposed zoning amendment.

Mrs. Jacobs believes that the problem is that the amendment would adversely affect the value of all marina properties, except for the applicant’s property. She feels that the applicant has other options in addition to amending the zoning ordinance.

The marina owner thinks that the amendment does not make sense because the reduction from two acres to 10,000 feet is too drastic of a change. She believes that pontoon boats can seat 15 people which could be three to six cars; whereas five separate, watercraft could be rented by people in the same car. She believes that the parking area at the Lakeside site is inadequate and the site is unsafe for renting boats.

Carol Jacobs believes that it would be impossible to operate the boat rental business without fueling, repairs or storage. She believes that while Lakeside was in operation personnel were hauling cans of gas, storing watercraft in the parking lot and servicing the vehicles at their houses.

Mrs. Jacobs believes that the map produced in the report showing the effect of the amendment on the watershed is inaccurate, in some respects. She believes that the proposed amendment should be limited to lakefront property. She also notes that according to a 2004 study, the carrying capacity of the lake is being exceeded on some days and the Lakeside boat rental operation would add to the problem.

Mrs. Jacobs feels that the report mistakenly refers to a DNR Developmental Permit which requires 200 feet of lakefront, while a commercial boat rental is a Special Permit and does not require any lake frontage, according to Maryland law. Though she feels the report is well written, she believes that it is misleading in evaluating the actual impact of the proposed amendment. She explained that with a DNR Special Permit, many more properties at the lake would be eligible to become a boat rental business.

In summary, Mrs. Jacobs recommends that the ordinance not be change to accommodate one business owner. Furthermore, she believes that Lakeside Commercial Properties could give up one of their existing tenants and rent personal watercraft then amending the ordinance would not be necessary. She feels that Lakeside also has the option of purchasing a grandfathered lot to develop a marina. Mrs. Jacobs believes that 10,000 square feet is inadequate and presents a safety hazard to the roads and the lake carrying capacity and should not exclude necessary services. She asks the Commission to not support this amendment and to seek alternatives.

Gary Pfirrmann, a marina owner at Deep Creek, feels that all of the current marina owners have fine business establishments. Mr. Pfirrmann believes that the Lakeside location in a dangerous area for a boat rental operation. He also feels that the Planning Commission should have asked him or his sales director regarding the impact to his business, if the ordinance was changed. He believes that all properties that are classified as marinas should be under the same regulations and parking requirements. Mr. Pfirrmann notes that his marina has abided by the zoning regulations and notes his business is also down this year.

Jonathan Kessler, who is a business owner at Deep Creek, appeared before the Planning Commission regarding the proposed amendment. Mr. Kessler believes that the ordinance is a document that can be changed, when necessary. He asserts that the ordinance is not a covenant, which can not be changed. Mr. Kessler believes that the ordinance should not be used to deal with the market economy. The market economy will dictate how many marinas are needed and how many will be successful. Mr. Kessler feels that restaurants are a good example and currently there are too many restaurants at the lake for owners to make money, so all are struggling. Many have not made the level of commitment or investment that he has, but they are still his competitors. If the ordinance can control the number of marinas, when will it begin to control the number of restaurants at the Lake? Mr. Kessler fails to see the difference between a grandfathered marina lot versus the new business that Lakeside would develop. Even though he feels that time spent by people boating on the lake is his biggest competitor as a restaurant owner, he would like to see the marina use expanded to include bars, restaurants and other amenities.

Mr. Kessler believes that safety is an issue and Lakeside should have a better plan to get fuel to his boats but zoning should not be used as an obstacle to

growth. The owner believes that the two acre requirement is irrelevant because there are no more two acre lots in the Town Center zone and any grandfathered lot could be used for a marina.

Chairman Ellington feels that it may be beneficial to recommend modifying the proposed amendment as a result of the comments that were put forward today. Mr. Ellington believes that the boat rental use should be restricted to the Town Center zone and that the use be constrained to properties having a minimum of 200 feet of lakefront, as measured at the Penelec line, for a boat rental business, irrespective of whether the lot is grandfathered.

Mr. Nelson believes that Carol Jacobs's points regarding the DNR regulations are well taken. Mr. Nelson explained that he is the author of the "Evaluation of Potential Impacts Resulting from the Amendment" and affirmed that a fundamental premise of the report was that DNR criteria required 200 feet of lakefront for a commercial dock permit. Eric Null, the new DNR lake manager, has interpreted that Maryland DNR regulations do not require 200 feet of frontage in order to establish a Commercial dock facility at the lake and Mr. Null has affirmed that position with the Maryland Attorney General. Mr. Nelson believes that if the Commission is inclined to approve this amendment, that it is appropriate to include a 200 foot lakefront minimum in order to discern how many properties are eligible to take advantage of this amendment.

The Director believes that another point made by Mrs. Jacobs is that some of the eligible, commercial properties do not have lakefront and could still take advantage of this amendment, as written. Limiting the amendment so that any new boat rental businesses are restricted to lakefront properties in the Town Center zone seems appropriate, making the "Evaluation of Potential Impacts Resulting from Amendment" document, more relevant to this type of use. Mr. Nelson notes that the report found twelve properties that would be eligible for the boat rental business and nine of those would also be eligible for a full service marina.

Chairman Ellington thanked the attendees for the positive input and believes that there will be ample opportunity for additional comments at the County Commissioners public hearing, if the Commissioners decide to act on this proposal to amend the zoning ordinance. A copy of the petition to amend the ordinance is attached to these minutes.

After discussion, the Planning Commission voted to recommend approval of this petition for amendments to the Ordinance, with certain modifications. The modifications include that this new use be restricted to the Town Center zone and that the use should be permitted only on lakefront properties having a minimum 200 feet of lakefront, as measured at the Penelec line, irrespective of whether the lot is grandfathered, under Section 157.042 of the Ordinance. The recommendation passed by a vote of 3 to 2, with one abstention and one recusal.

B. Miscellaneous

1. Deep Creek Watershed Zoning Appeals Cases –

a) **VR-701** - an application submitted by Delores J. Vonada for a Variance to allow an addition to a residence that would come to within 5.0 feet of the side property line. The property is located at 561 Marsh Hill Road, tax map 50, parcel 529 and is zoned Lake Residential 1. The Planning Commission offered no comments on the proposed application.

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

3. Waiver Requests- None

4. Mining Permit Applications – None

5. Agland Preservation District Applications-None

C. Action on Major subdivisions-

a) **Preliminary and Final Plat – Keyser’s Ridge Business Park.** The developers, the Board of Garrett County Commissioners, submitted a Preliminary and Final plat for one commercial lot located along Ridge Business Drive. Lot 2 is located on tax map 7, parcel 40 in an Employment Center land classification. The Planning Commission granted approval of the Preliminary and Final plat by a unanimous vote of 7 to 0.

b) **Final Plat- Sweet Rewards Farm.** The developers, Donald and Pamela Adams, submitted a plat to clarify the boundaries of a previously approved subdivision located on Klotz Farm Drive. Sweet Rewards Farm is located on tax map 42, parcel 65, in a Suburban Residential land classification. The Planning Commission originally granted final approval for the 50-lot subdivision on July 6, 2005. The purpose of the plat is to separate the previously recorded lots and undeveloped land that will be transferred to new developers from the residual tract that is to be retained by Mr. and Mrs. Adams. No new lots are being created by this plat. The Planning Commission granted approval of this Final plat by a unanimous vote of 6 to 0.

D. Next Scheduled meeting - The next regular meeting of the Planning Commission will be held on **August 7, 2013**, in the County Commissioners Meeting Room, at 1:30 pm.

E. Adjournment- 3:15 p.m.

Respectfully submitted,

William J. DeVore
Zoning Administrator

