

GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT

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MINUTES (As corrected 12/5/13)

The Garrett County Planning Commission held its regular monthly meeting on Wednesday, November 6, 2013, at 1:30 p.m., in the County Commissioners Meeting Room. Members and guests in attendance at the meeting included:

Troy Ellington	Jeff Conner	Jeff Lowdermilk
Tony Doerr	Tim Schwinabart	John Nelson-staff
Jeff Messenger	Karen Myers	William DeVore-staff
Bob Gatto	Paul Durham	Deborah Carpenter-staff

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

A. Review and Discussion- Wisp Resort PRD Concept Plan Modification-Karen Myers- Ms. Myers is proposing to change the Wisp PRD by eliminating an additional property from the PRD. Ms. Myers previously made a request to remove a 90-acre tract of land from the PRD, which the Planning Commission approved, subject to a requirement that a “single legal entity” Development Agreement is executed among all new owners of the land in the WISP Resort PRD.

Mrs. Myers explained that the new tract that is proposed to be removed is a 246-acre parcel that has now been transferred to her son, Adrian Spiker. This parcel had 175 units assigned to it, as shown in the original concept plan as development pods 13A and 13B. This property was sold at public auction and purchased by Mr. Spiker, on August 28, 2013. Mrs. Myers believes that the development potential for this property is in the distant future, because of its out-lying location and distance from existing infrastructure, in the PRD.

Separately, on the Planning Commission agenda is a Special Exception request to the Deep Creek Watershed Board of Appeals to allow commercial trails on the same property. The Board routinely requests the Commission for advisory opinions from the Commission on Special Exception cases.

With the removal of both the 90 and 246-acre parcels, 277 development units would be extinguished from the PRD. The effect of removing this acreage would be to reduce the amount of required open space, since the open space requirement is 25% of the overall area. The PRD would now be deficient by 7.75 acres of open space area that the new owners would need to set aside, and this would need to be spelled out in the pending development agreement. Mrs. Myers believes that the additional acreage could be made up without difficulty, since the shortfall is small. The 246-acre parcel was not part of the proposed open space area of the PRD. Mr. Nelson explained that a total of 491.75 acres of open space are needed within the PRD. Already, 90.4 acres have been set aside by the developers and an additional 393.258 acres and the 7.75 acre shortfall will be addressed in the development agreement.

Mrs. Myers stated that the development agreement is currently being updated. She recently requested that all of the parties of the amended development agreement provide signature pages, as soon as possible. Additions and clarifications are being suggested by the parties involved and must be agreed upon, by unanimous consent.

If the 246-acre tract is removed from the PRD concept plan, a total of 1,965.36 acres would remain in the PRD, with a total of 2,223 units allowed. A total of 238 units have been approved thus far. Nineteen hundred eighty-five units would be left for the Commission to review and approve in the PRD.

John Nelson noted that the parcel is on the periphery of the PRD and he believes that the PRD designation allows for some flexibility in lot size, layout and width. The designation also allows for other types of units such as townhouses. Removing the parcel from the PRD would require the parcel to be subject to the more typical subdivision, with the standard one-acre lot size. Mr. Nelson sees no intrusion into the overall development with the proposed withdrawal of the 246 acres from the PRD.

Mr. Nelson reiterated that, as with the previous request, any final written approval should be withheld until the final owner's agreement is submitted to the Planning Office. The agreement will involve EPT, NLP, DC Development and First United Bank. The Commission unanimously approved the request, by a vote of 6 to 0, to revise the concept plan of the Wisp Resort PRD to remove the 246.42 acre parcel from the PRD, conditioned on the submission of the single entity development agreement to the Planning Office.

- B. Discussion of Department of Natural Resources (DNR) Proposal to add to Maryland “Wildlands”** –Commissioner Gatto noted that there will be a meeting this evening, at 6:00 pm at the Discovery Center at Deep Creek Lake State Park, concerning a new DNR Wildlands proposal. The County Commissioners have taken the position to not support the addition of the proposed acreage to the Maryland “Wildlands”. The new acreage would more than double the existing Wildlands acreage in the county. The State believes these areas to be ecologically significant and provide pristine lands, old growth forest and unique species. These Wildlands could not be used for logging, improved trails, camping and other uses. Commissioner Gatto stated that the County Commissioners do not support the increase in Wildlands acreage in the County, due to economic, trail use concerns and other considerations. Mr. Nelson also explained that the DNR has stated that chainsaws would not be allowed in the Wildlands except for emergency situations. The use of the Kendall Trail, for bicycles may also be stopped or limited, if the designation is expanded to the Youghiogheny Corridor, as proposed.

The Planning Commission voted to oppose to add new Wildlands in Garrett County because of the limitations that are imposed on the use of the land, by the Wildlands designation, by a vote of 6 to 0. Chairman Ellington will present the Planning Commission’s view of the proposal this evening at the meeting.

6. Miscellaneous

A. Deep Creek Watershed Zoning Appeals Cases –

- 1) **SE-430** - an application submitted by Adrian Spiker II, for a Special Exception permit for a commercial, recreational trail area. The applicant proposes to develop off road trails for motorized and non-motorized activities including biking, hiking, cross country skiing, horseback riding and other off-road vehicle use, on property owned by the applicant. The property is a 246-acre tract located off of Shingle Camp Road, tax map 57, parcel 47, and is zoned Lake Residential 1 (LR1). The Planning Commission believes that if there are serious concerns by the neighboring property owners, the Appeals Board is urged to consider the Special Exception very carefully.
- 2) **VR-710** - an application submitted by Eamonn Reilly for a Variance to allow a second story addition to a residence that would come to within 9.0 feet of a side property line. The property is located at 2505 Lake Shore Drive, tax map 58, parcel 252, and is zoned LR1. The Planning Commission offered no comments on the proposed application.

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

C. Waiver Requests- The Building Permits Office discovered that Jeff Lowdermilk began construction of a pole building without a building permit on his property, which is two acres in size, located at 619 Teets Road, tax map 22, parcel 25. The location of the building violates the County Sensitive Areas Ordinance regarding stream buffers and building setbacks from the road right-of-way. Mr. Lowdermilk is seeking a waiver from these provisions of the Ordinance. The new pole building is about 10 to 13 feet from the stream, which should have a 50-foot setback from the top of the stream bank. The building is about 11 feet from the “shoulder” of the road, which should be setback about 20 feet from the road right-of-way. Mr. Lowdermilk has stopped construction on the structure which is now partially built. The owner has nearby family who has active farming operations.

According to the Sensitive Area Ordinance, the Planning Commission may grant a waiver if the applicant establishes to the satisfaction of the Planning Commission that the waiver will have minimal impact upon important natural features and is necessary to avoid an undue hardship that was not self-created, resulting from the peculiar and uncommon conditions of the property.

Mr. Lowdermilk believed that the barn/outbuilding did not need a building permit because it was being used for agricultural purposes. He also was unaware that there is a building setback requirement from the intermittent stream on his property. Mr. Lowdermilk has not applied for a building permit until he secures the waivers from the Planning Commission.

Though the Commission has concerns with the location of the building, they believe that the circumstances of the construction allow for two waivers, in this case. The Commission voted unanimously, by a vote of 6 to 0, to conditionally approve the waivers. The waivers are approved on condition that any livestock at the site is limited to five animals and that the county is not responsible for damage that may occur to the building.

D. Discussion on Major Subdivisions- Thousand Acres –Preliminary Final Plat- Poland Run Lot 4 and 5- The developer, Appalaichan Investment Properties, submitted two preliminary and final plats for two lots located along Thousand Acres Road. Lot 4 and lot 5 are located on tax map 67, parcel 780, in a Lake Residential-1 zoning district. The Planning Commission granted conditional approval of these Preliminary and Final plats by a unanimous vote of 6 to 0. The Commission’s approval was conditioned upon receipt of the developer’s written commitment to widen Thousand Acres Road, where necessary, and the final approval of the plat by the Health Department.

E. Mining Permit Applications – None

F. Water Appropriations Permits –

- 1) Brookville Renewable Power has submitted a renewal for the use of 53,000 gallons of water per day to be used for cooling purposes at the hydroelectric generation plant. The Planning Commission offered no comments on the proposed application.
- 2) Roam Around Campground off of Church Run Road has submitted an application for the renewal of a discharge permit for the use of 16,000 gallons of water per day of treated industrial wastewater at the campground near Finzel. The Planning Commission offered no comments on the proposed application.

G. Agland Preservation District Applications-None

H. Discussion of Wind Turbine Legislation- Planning Commission member Jeff Conner brought up a proposal of a way, to limit wind turbines, in the County. He believes that the Commission should again visit the idea of “Performance Zoning” as a way to limit the expansion of wind turbine construction, as was proposed in 2008, by attorney Bill Wantz who represented an anti-wind group. The performance zoning would “piggy back” on the Deep Creek Watershed Zoning Ordinance to prohibit more wind turbines in the County.

Mr. Conner explained that wind turbine companies have found ways to skirt the public review process by filing more and smaller applications under different companies, to avoid the 70-megawatt threshold. The Planning Commission member believes that there should be a limit to the height and number of these structures. He stated that some proposals include wind turbines nearly 500 feet high. Jeff. Conner explained that the proposed change to the Sensitive Area’s Ordinance, the proposed Land Use Ordinance and performance zoning have all failed to regulate wind turbines in the recent past.

Mr. Conner requests that the Planning Commission reconsider the request to use Performance Zoning for regulation of wind turbines.

7. **Next Scheduled meeting -** The next regular meeting of the Planning Commission will be held on **December 4, 2013**, in the County Commissioners Meeting Room, at 1:30 pm.
8. **Adjournment-** 3:00 p.m.

Respectfully submitted,

William J. DeVore

Zoning Administrator

