

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING – JANUARY 7, 2008**

The Washington County Planning Commission held its regular meeting on Monday, January 7, 2008, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Linda Parrish, Terry Reiber, Clint Wiley, Sam Ecker, Bernie Moser and Ex-Officio James F. Kercheval. Staff members present were: Planning Director Michael C. Thompson, Chief Planners Stephen T. Goodrich and Timothy A. Lung, Senior Planners Jill Baker, Misty Wagner-Grillo and Lisa A. Kelly, Chris Cochrane, Planner, Environmental Planner Bill Stachoviak, and Administrative Assistant Debra Eckard.

CALL TO ORDER

Chairman George Anikis called the meeting to order at 7:00 p.m.

MINUTES

Mr. Ecker made a motion to approve the minutes of the December 3, 2007 Regular Planning Commission meeting as amended. Seconded by Mr. Reiber. Unanimously approved.

OLD BUSINESS

Update on US Route 40/Edgewood Drive Intersection and Mt. Aetna Road project

Mr. Thompson provided a brief update on the US Route 40/Edgewood Drive intersection project. The revised Memorandum of Understanding will be presented to the Board of County Commissioners on Tuesday, January 08, 2008 for their review and approval. The project will be advertised this month. Construction is scheduled to begin at the end of April, 2008 with a projected completion date of November, 2009.

Mr. Thompson stated that the Mt. Aetna Road project was delayed through the State Highway Administration permitting process; however, the permits have now been released. The project will be advertised this week. The project is scheduled to begin early in April, 2008 with a projected completion date of September, 2008.

There was a brief discussion with regard to funding issues and the relocation of utility lines. Mr. Anikis requested an update in six months.

NEW BUSINESS

- VARIANCES

William and Connie Walters S-07-133)

Ms. Kelly presented for review and approval a reduction of the 50-foot agricultural buffer to a 15-foot buffer for a proposed one lot single-family subdivision for an immediate family member. The property is located along the north side of Broadfording Road.

Discussion: Mr. Reiber asked why the applicant is requesting such a sizable reduction in the buffering requirement. Mr. Frederick of Frederick, Seibert & Associates, consultant for the applicant, stated that the Broadfording Bible Brethren Church owns the property to the rear that adjoins the proposed lot and is currently an agricultural field. Mr. Reiber expressed his concern that the land could be used for agricultural purposes in the future, which could impact the proposed lot.

Mr. Kercheval recommended that a note be added to the plat stating that the Planning Commission granted a variance with the understanding there may be a larger impact from the agricultural operation in the future. Mr. Lung stated that the Planning Department has appropriate language previously used on other plats. He also suggested that the Planning Commission may want to consider adding a note that states that the existing tree line on the property shall not be removed. The applicant, Mr. Walters, stated that the tree line is on property currently owned by his parents and would not be removed.

Motion and Vote: Mr. Kercheval made a motion to approve the reduction of the 50-foot agricultural buffer to 15-feet contingent upon a note being added to the plat, as discussed, using appropriate language approved by the Planning staff and contingent upon the tree line remaining on the property. Seconded by Mr. Reiber. The motion passed with Mr. Kercheval, Mr. Reiber, Mr. Wiley, Ms. Parrish and Mr. Moser voting "aye" and Mr. Ecker voting "nay".

- PRELIMINARY CONSULTATIONS

Fort Ritchie Redevelopment (PC-07-007)

Mr. Lung presented a brief update and clarification of issues previously discussed by the Planning Commission with regard to the Preliminary Consultation and site plan for the redevelopment of the former Fort Ritchie army base. The Board of Zoning Appeals at their last hearing granted approval of modifications to the parking requirements that were a condition of the Planning Commission's site plan approval on December 3, 2007.

The Planning Commission's site plan approval of December 3, 2007 was also contingent upon Staff's approval for adequate lighting on the site. Mr. Lung stated he has made a visit to the site and he believes that the existing lighting will be adequate. He noted that the existing lighting on one building was disconnected at the time of his visit because of demolition work currently being performed on the site. Mr. Lung will follow up with the consultant on the existing lighting on that particular building.

Mr. Lung stated that Hagerstown Community College is moving forward with their plans to locate a satellite campus at Fort Ritchie. They will be using one of the existing buildings that were shown on the site plan that was reviewed in December.

With regard to excise tax requirements, Mr. Lung stated there is a provision in Section 5.c of the Excise Tax Ordinance for replacement construction. Some of the buildings that have been removed or are proposed for removal will be given credits for replacement of existing buildings, particularly on the residential units. Mr. Lung noted that the Adequate Public Facilities Ordinance does not address replacement structures. However, it would seem reasonable if there were a replacement structure proposed for an existing dwelling that was demolished, the APFO impact would be the same. Therefore, in that regard Staff believes there will be some consideration for replacement structures under the APFO school test.

Comments: Mr. Kercheval stated that when an area has been vacant for several years, the replacement structures for residential units is a different and unusual situation that may require review of the language in the Adequate Public Facilities Ordinance and he is not sure if consideration would be given.. The elementary and middle schools currently have capacity; however, the high school is over capacity. Capacity at the high school may be resolved by the time COPT is ready to construct residential units if a new high school is constructed in the eastern section of the County.

Mr. Lung noted that another issue of concern was the Forest Stand Delineation and if there was a change to the forested area that was previously delineated. Mr. Bill Stachowiak, Environmental Planner for Washington County, and Mr. Lung made a visit to the site. Mr. Lung stated that a small area may have been disturbed since the original FSD was completed and should be shown on an updated FSD. However, Staff does believe that a completely new Forest Stand Delineation is not necessary and that an update to the original FSD should be sufficient.

The final issue of concern as noted at the December Planning Commission meeting is the power substation. Mr. Lung noted that under all zoning districts identified in the Zoning Ordinance with the exception of the Special Economic Development zoning district a public utility building or structure not considered essential utility equipment (i.e., a substation) is listed as a special exception or principle permitted use. Staff believes this omission was an oversight and should be addressed by a text amendment to the Zoning Ordinance. There is currently a substation on the property and a replacement substation may be considered a replacement of an existing non-conforming use. Staff will continue to review this issue until a text amendment to the Zoning Ordinance is adopted.

Comment: Mr. Moser noted that the new substation is being placed in a different location. Any expansion of the existing substation, under the current zoning regulations, would require a special exception to be granted by the Board of Zoning Appeals. Mr. Thompson stated that BZA action may be required.

Mackwest Commercial (PC-07-005)

Mr. Lung presented for review and comments the revised concept plan for Mackwest Commercial. The property is located at the southeast corner of US Route 40 and Mt. Aetna Road. During the October 1, 2007 Planning Commission meeting, members expressed their concern with regard to several issues including the buffer yard next to the adjoining residential property, the type of planting material within the buffer yard, the height of the fence, the location of the proposed dumpster, the location of the order board and the drive-up window for the proposed restaurant, the proposed location of the handicapped parking space and the configuration of the restaurant and the way the drive-up lanes were situated. The following revisions were made to the concept plan: the buffer yard was increased from 15-feet to 25-feet which is consistent with HI-1 standards; the screen planting materials have been changed from 5 gallon container grown arborvitae 15-feet on center to evergreen trees, 7-feet in height, 2" cal., 15-feet on center; the dumpster location has been moved from the southeast corner of the parking lot to the south side of the building; the order board and drive-up window have been moved from the south side to the north side of the building; the handicap parking spaces have been relocated directly adjacent to the building. There has been no change in the height of the 6-foot fence to an 8-foot fence, no additional screening is proposed along the common boundary with the residential property along US Route 40 at the storm water management area and there has been no change to the entrance at Mt. Aetna Road and North Colonial Drive as previously recommended by the Planning Commission.

Discussion and Comments: Mr. Reiber expressed his concern with regard to spillover lighting issues and noise issues. He believes these issues need to be addressed.

Ms. Parrish expressed her concern with regard to the landscape buffer between the proposed restaurant and the residential property along US Route 40 at the storm water management area.

Mr. Anikis asked why the height of the fence was not changed. Mr. Poffenberger of Fox & Associates, consultant, stated that the developer has no objection to the 8-foot fence and was an oversight on the

revised plan. Mr. Anikis expressed his concern for the safety of pedestrians crossing the drive-thru lane to access the restaurant. He made an inquiry with regard to safety measures that the developer is proposing for pedestrian access. Mr. Mackintosh, developer, stated that cars would approach the drive-thru lane at a slower speed and there is access to the restaurant to the south and west sides of the building. Mr. Anikis asked if a crosswalk or a sign could be installed to alert drivers. Mr. Mackintosh stated they could provide a cross-hatched area for pedestrians.

Mr. Lung discussed the possible future realignment of the Mt. Aetna Road/US Route 40 intersection. He stated that the site would still be able to function normally if the realignment would occur.

- SUBDIVISIONS

Mike and Kim Capone, Lots 10-14 (S-06-098)

Ms. Wagner-Grillo presented for review and approval the preliminary/final plat for Mike and Kim Capone, Lots 10-14. The property is located along the south side of Shaffer Road, east of Dam #4 Road and is zoned A(R) – Agricultural Rural. The developer is proposing five single-family lots. Water and sewer service will be provided by well and septic. The property is located in the Fountain Rock Elementary, Springfield Middle and Williamsport High school district. Fire services will be provided by the Fairplay Fire Department and ambulance services will be provided by Williamsport. A new cul-de-sac of 650-feet is proposed. Forest Conservation requirements will be met by retaining 5.98-acres of forest on the remaining 26.42-acres of land.

Motion and Vote: Ms. Parrish made a motion to approve the Preliminary/Final Plat for Mike and Kim Capone, Lots 10-14 as presented. Seconded by Mr. Reiber. Unanimously approved.

- SITE PLANS

Wireless Communications Support Facility – Boonsboro (SP-07-049)

Ms. Kelly presented for review and approval a site plan for a Wireless Communications Support Facility located along the east side of St. Paul Road in Boonsboro. The applicant is Liberty Towers/Chesapeake Towers, LLC of Rockville, Maryland. The site is located on a 15-acre parcel owned by Matthew and Jennifer Carroll. The area to be leased is .230-acres and is zoned C – Conservation. The applicant is proposing a 160-foot monopole tower with a 4-foot lightning rod. An existing cell tower is located on the site approximately 260-feet away. A 20-foot access will be created to get to the tower. The tower will be 164-feet from the property lines and 364-feet from the required zoning districts. The tower will be designed to accommodate four carriers, which will also include the ability to add local fire and rescue communications. A 7-foot fence will be constructed around the tower. The monopole will be gray in color and will not be lit. There will be two equipment shelters on the site. Emergency identification signs will be located on the fence. No overhead transmission lines will be located near the site. The monopole will be situated within an area of mature vegetation on a plateau. The site is exempt from the requirements of the Forest Conservation Ordinance because the disturbed area will be less than 40,000-square feet. The Board of Zoning Appeals granted a special exception to locate the tower on this site in June, 2007. Included in the Planning Commission's file is a photo-simulation, lease agreement and the impact analysis on environmental and historical features. Ms. Kelly distributed a copy of a letter from the Mayor of Boonsboro reiterating the Town's concern with regard to another cell tower in this area which is also included in the Planning Commission's file.

Comments: Mr. Moser stated that the second tower will have a negative impact on the viewshed depending upon the location from which the tower is seen.

Discussion: Mr. Kercheval made an inquiry relative to the language that should be placed on cell tower plats with regard to the use of the tower by the County's Emergency Services Department. Ms. Kelly stated there is no exact language; however, the lease agreement and site plan notes that the cell tower will be available to all users. Mr. Thompson stated he has had conversations with Staff, the Board of Appeals and the County Attorney who works with the Board of Appeals, to make the language part of the standards for approval. Mr. Wiley stated that clarification is needed to determine if the County will be charged for the cell tower space.

Motion and Vote: Mr. Moser made a motion to approve the site plan as presented. Seconded by Mr. Ecker. Unanimously approved.

Wireless Communication Support Facility – Lappans (SP-07-050)

Ms. Kelly presented for review and approval a site plan for a Wireless Communication Support Facility along the northeast side of Lappans Road just east of its intersection with Sharpsburg Pike. The applicant is Liberty Towers of Rockville, Maryland. A 15-foot access road is proposed along property owned by Beverly Shriver. The site is located on a 100-acre parcel owned by Ms. Shriver. The total leased area will be .23 acres and is zoned A(R) – Agricultural Rural. The proposed lattice tower is 195-feet with a 4-foot lightning rod. The proposed tower is approximately 199-feet away from the property line in all directions and will be 399-feet away from all existing structures. The proposed tower will be designed to accommodate six carriers. A 7-foot high fence with barbed wire will be constructed around the tower. The tower will have a galvanized finish and will not be lit. There will be two equipment shelters also located on the site. An emergency identification sign will be placed on the fence. There are no transmission lines in close proximity to this site. The tower is situated in an area of mature vegetation and is located in a valley. The site is exempt from the requirements of the Forest Conservation

Ordinance because the disturbed area will be less than 40,000-square feet. The Board of Zoning Appeals granted a special exception to locate the tower on this site in June, 2007. Included in the Planning Commission's file are a photo-simulation, lease agreement and the impact analysis on environmental and historical features. A letter was received from the Historic District Commission that indicates they are not in favor of the location of this cell tower. However, the Board of Appeals already granted its approval prior to the HDC's review of the project. The HDC expressed their concern for the historic church located west of the intersection at Lappans Road. The Historic District Commission has requested that they review all cell tower applications prior to the Board of Zoning Appeals hearings.

Discussion: Mr. Anikis expressed his concern with regard to the historic structure known as Rockland located north of Lappans off of the Sharpsburg Pike. He commended the applicant for providing the photometric pictures in their application packet. Mr. Thompson noted that the Historic District Commission will be reviewing all cell tower applications prior to the Board of Zoning Appeals hearings. Mr. Anikis also expressed his concern that the Maryland Historical Trust is not reviewing and/or commenting on any of the cell tower applications. Mr. Michael Hoke, representative for Liberty Towers, stated that the Maryland Historical Trust has repeatedly told him that they do not have the Staff available to review all cell tower applications. Mr. Goodrich also noted that the MHT's comments are very limited due to a programmatic agreement with the Federal government with a pre-determined method of reviewing cell tower applications. The MHT is very limited in the comments they can make and how their comments will affect each individual application. The programmatic agreement states that these reviews will only take into consideration currently listed National Register sites or currently eligible National Register sites.

Motion and Vote: Mr. Ecker made a motion to approve the site plan as presented. Seconded by Mr. Reiber. Unanimously approved.

Liberty at Hunter's Green II (SP-07-056)

Ms. Kelly presented for review and approval the designated "fast-track" site plan for Liberty at Hunter's Green II, Lot 7. The site is located along the east side of Newgate Boulevard and is zoned HI-1 – Highway Interchange I. The total parcel area is 142-acres. The developer, Liberty Property Trust, is proposing to construct two combination warehouse/office buildings. One structure will be 554,000-square feet and one structure will be 1,138,000-square feet and the height of both buildings will be approximately 44-feet. The site will be served with sewer from Washington County and water from the City of Hagerstown. There will be two access points off of Newgate Boulevard and one off of Hopewell Road. The site will be in operation 7 days per week, 24 hours per day. There will be three shifts with approximately 150 employees per shift. There will be approximately 35 to 50 delivery trucks per day. Parking required is 225 spaces and 480 spaces will be provided with an additional 665 tractor trailer parking spaces. The proposed signs will include one 4' x 8' sign at the main entrance, one building mounted sign on each building and directional signs on the interior. Lighting will be building and pole mounted throughout the parking areas. A dumpster will be provided for solid waste as well as a trash compactor. There are three storm water management basins located on the site. The back portion of the site will not be developed because it is within a 100-year flood plain. The developer is proposing to meet the requirements of the Forest Conservation Ordinance by payment-in-lieu for 16.97-acres and planting of 10.62-acres. Landscaping will be planted around the building, the perimeter of the parking areas, and at the entrance. Landscaping materials will include Spruce pine, Ash, Oak, and willow trees, various shrubs, and ornamental grasses. Several agency approvals are outstanding.

Discussion: Mr. Fred Frederick of Frederick, Seibert & Associates, consultant, stated that approvals have been received from several agencies. The City of Hagerstown is working directly with the Fire Engineer to size the meter, which has caused a delay in their approval. Mr. Kercheval expressed his concern with regard to screening on the north side of the property. He noted that the property behind the site is zoned HI-1 – Highway Interchange 1. Mr. Frederick stated that the cut of the grade may eliminate the need for buffering and suggested that Staff could determine if buffering is needed after all the grading is finished. Mr. Kercheval stated that Staff's determination if additional buffering is needed would be acceptable. Mr. Kercheval noted that many developers are using solar power on large rooftops for large distribution centers and there are State funds available.

Motion and Vote: Mr. Reiber made a motion to approve the site plan contingent upon all agency approvals and Staff's determination if additional buffering will be needed along the north side of the property between this site and the property zoned HI-1 – Highway Interchange 1. Seconded by Ms. Parrish. Unanimously approved.

**** NOTE:** Revisions to the site plan were made and submitted by Frederick, Seibert & Associates following all agency reviews and comments. Staff has reviewed the buffering issue and has determined that no additional screening will be necessary due to the elevation of adjoining site which would make any screening useless.

OTHER BUSINESS

RZ-07-007 Martin Marietta Materials

Mr. Goodrich presented for review and recommendation a zoning map amendment for 77.08 acres located along the south side of Maryland 68, 800 feet west of its intersection with Bottom Road. The applicant, Martin Marietta Materials, is requesting that the IM – Industrial Mineral Overlay zone be applied to property currently owned by Peggy Petre. Throughout the course of this case, discussions have

focused on Section 15.3 of the Zoning Ordinance that states, "In its deliberation of an application for an IM district, the Planning Commission shall consider the purpose of the IM district, the applicable policies of the Comprehensive Plan; the compatibility of the proposed district with the adjacent property; and the impact of mineral extraction operations on the public roadways. The evaluation of each criteria shall result in findings of fact as part of a recommendation on the application to the Board of County Commissioners." It is Staff's opinion that the rezoning application can pass easily on three of the four specified items: the purpose of the IM district, the applicable policies of the Comprehensive Plan, and the effects on the roadways. However, the analysis of compatibility with adjacent properties has been inconclusive. Staff recognizes that approving the rezoning would be consistent with the purpose of the district. The purpose of the district is: to allow large-scale mineral extraction in the rural areas; to protect the property from other uses being established on it so they will not conflict with the future mineral extraction on the site; to serve as an early warning to adjacent property owners as to what is going to happen on the property; and to have the mineral extraction operation be compatible with adjacent land uses. Staff recognizes that the application is consistent with the Comprehensive Plan. The language within the Comp Plan is aimed at the design of the district as a floating zone with protective measures; location guidelines to ensure that the zone is in the rural area and is placed on areas of known mineral resources; and compatibility with adjacent properties and serves that purpose as long as the warning is heeded. Staff recognizes that the facts regarding the effects on public roadways were considered. The applicant has stated that Staff reviewed all previous plans and the current amount of traffic has been documented in the Staff Report and the applicant also stated that there are no plans to increase the amount of traffic. Traffic could increase if the market increases, but the increase would not be directly related to the zoning change of the property. Mr. Goodrich stated he received some information late today with regard to the \$200,000 bond to cover maintenance issues on Bottom Road. During the public hearing, Staff was asked if the current bond was sufficient. As part of the routine application review, Staff made an inquiry to the Washington County Engineering Department to determine if the amount of the bond was sufficient to cover their needs and they responded that the bond was sufficient. However, the Director of Public Works recently reviewed the bond and with the effects of inflation determined that the bond will not be sufficient. He has determined that a surety in the amount of \$330,000 will be needed at this point in time. Mr. Goodrich noted that there would be an opportunity during the site plan review to require an increase in the surety.

Discussion: Mr. Anikis asked if the State Highway Administration has any requirements for a surety for maintenance of Maryland Route 68. Mr. Goodrich stated that the State Highway does not require a surety for roadways.

Mr. Kercheval gave clarification with regard to the surety issue. He stated that he had made a request with regard to the amount of surety prior to the public hearing; however, a response was not received until after the hearing from the Director of Public Works. Mr. Kercheval, after reading the Staff Report Following the Public Hearing, noted that the amount of the surety bond had not changed and he contacted Mr. Goodrich with the appropriate information.

Mr. Goodrich continued his presentation focusing on compatibility with adjacent properties. With the mining operation proposing to expand to the west closer to existing residential development, staff is not completely convinced that these two uses are compatible and could co-exist without problems based on resident's comments during the hearing. Martin Marietta Materials will comply with all regulations and requirements to operate the quarry; however, the neighbors perceive a conflict between themselves and the quarry.

In conclusion, Staff provided three options that the Planning Commission could consider when making its recommendation on this case. 1) The application could be denied because there is some question about compatibility with adjacent properties and land uses. 2) The application could be denied until issues are resolved, such as the boundary for the zone of influence, ways to address the endangered species on the site, and an opportunity to determine how the residents feel about the conditions of approval offered by Martin Marietta and if the conditions would remove their objections and concerns. 3) Approve the application with all of the conditions that were offered. Some of those conditions would be applied whether they are offered as conditions or not. For example, site plan review and approval, permits from the State, the surety issue, etc.

Discussion: Mr. Anikis asked for clarification with regard to the Commission's requirements to address the issues in the letter received following the public hearing from the Department of Natural Resources. Mr. Goodrich stated that the County does not have regulations they must comply with because the species specified in the DNR's letter is classified as "in need of conservation" rather than threatened or endangered. If the State has regulations to address this issue they would be applied in the State's review of its permit application.

Mr. Reiber asked what kind of complaints have been filed with the quarry in 2007. Mr. Urner, attorney for the applicant, stated that each complaint registered with Martin Marietta and during the public hearing has been addressed. He could not recall the specifics of those two particular cases.

Ms. Parrish expressed her concern that the complaints were not being recorded. She does not believe there is an appropriate process for the residents to register their complaints and have them addressed. Ms. Parrish expressed her opinion that it is a "buyer beware" situation because the original quarry was at its current location prior to residents moving there; however, based on the zone of influence, the residents were not expecting an impact on their residence. The residents at the public hearing are currently experiencing issues in the area proposed for further expansion. Ms. Parrish recommended that the pre-

blast survey should be completed ahead of time so there is a record of the condition of the residences. She believes that a County department should be the local contact for residents to file their complaints and the complaints need to be followed up to make sure that issues are being resolved. Ms. Parrish made an inquiry with regard to the six additional properties that are being included in the zone of influence. Mr. Goodrich stated that if the rezoning case is approved, the applicant has formally offered to agree to those conditions. Ms. Parrish expressed her desire to see improved communication between the quarry and the residents, the process to make and record complaints, the process to have pre-blast surveys completed ahead of time, etc. Mr. Goodrich noted that it would be beneficial to have one department to handle all complaints; however, there are so many different departments and agencies with varying authority involved in the various steps throughout the process. He recommended that if the Planning Commission is going to recommend approval of this case, the recommendation should be very specific with regard to handling complaints. Mr. Moser believes that there is confusion within the County who is responsible for different issues. He also expressed his opinion that the State laws, or lack thereof, are also an issue. Mr. John Urner, attorney for the applicant, stated that Martin Marietta will include the additional six properties within the zone of influence regardless if the State expands the zone or not. Mr. Ecker expressed his concern with regard to the dairy farmers in the area and posed the question, "What would happen to the dairy operation if the farmer's well goes dry?" Mr. Urner stated that the applicant would be responsible to supply the amount of water needed from the time the well goes dry until a new well is established. Mr. Ecker asked what the timeframe is to get the water to the farm. Mr. Urner stated that the applicant, by State law, has 24 hours to get water to the farm. Mr. Ecker stated that a dairy farmer cannot wait 24 hours for water. Mr. Urner stated they would try to supply water more quickly to the farmer and if the State law changes to require a shorter time period, the applicant would adhere to the new regulations.

Mr. Anikis noted that 3 or 4 dairy farmers were present at the public hearing and he asked if those dairy farms are included in the zone of influence. Mr. Urner stated that the six additional properties include only one dairy farm, the other five properties are residential.

Mr. Wiley expressed his opinion that this is the kind of area where mining operations should occur and is recommended by the Comprehensive Plan. He would agree with option 3 as presented by Mr. Goodrich.

Mr. Reiber expressed his support for option 3 also.

Mr. Moser would also agree with option 3. However, he expressed his opinion that the County's Zoning Ordinance has allowed the approval of residential properties in close proximity to the quarry and then compatibility with the quarry becomes an issue. Mr. Moser also expressed his concern with regard to the State applying the laws and ensuring they are adhered to. He also believes the County needs to address the issue of complaints and who will handle these complaints.

Mr. Anikis expressed his concern with regard to complaints about speeding vehicles on Clear Spring Road. He believes that the truck drivers need to be made more aware of the risks involved with the speeding issue on these roads. Mr. Anikis also expressed his concern with regard to complaints about the dirt and dust from the trucks. He recommended that the trucks should be completely covered when they leave the quarry. Mr. Anikis expressed his concern with regard to low energy vibrations over a long period of time that may cause structural damage to homes in the area.

Mr. Thompson asked if the conditions stipulated by the applicant could be added to the permit from the State. If they are not part of the State permit, the problems would then be reported to the County and the County needs a way to address these issues. Mr. Paxton, a Martin Marietta representative, stated they could make the request to the State; however, he does not know if the State would honor the request. Some of the conditions would be shown on the site plan when it is submitted for review and approval. Mr. Urner stated that the six properties to be included in the zone of influence could be added to the State permit. A similar request was made by another quarry to the State and the State did accept the requested zone of influence. He believes that the State is more inclined to add properties to the ZOI rather than to let them out of the ZOI. Mr. Thompson suggested all of the dairy farms within close proximity should be included within the zone of influence. Mr. Anikis suggested that a letter be written to all residents in that area that includes a phone number to contact with their complaints. Ms. Parrish also suggested that the complaints should also be tracked with regard to the type of complaint, when the complaint was made, etc.

Mr. Urner noted that the applicant has prepared documentation with regard to the applicant's response if a well is lost. The information includes where the water would come from, the volume of water to be supplied, how it would be trucked to the farm site and from what locations it would be dispersed, Mr. Goodrich stated that a "Water Supply Replacement Plan" was included in the application materials. The process is fully disclosed in that document.

Mr. Kercheval suggested that the applicant should work with the farmers to prepare an emergency plan that would be acceptable to everyone. Mr. Urner stated that a specific plan has already been prepared; however, there is a question if it addresses the worst case scenarios for a farm situation. He suggested that the Planning Commission or BOCC should provide a "worst case scenario" from which to prepare a plan. The case should include requests for the following information: how will water be supplied, how will the water be used once it is on-site; how fast can the water be delivered, etc. Mr. Wiley suggested working with the affected farmers to determine their needs.

Mr. Anikis suggested that based on the testimony presented at the public hearing by Mr. Roth a list of farm owners in the area should be compiled. A meeting should then be planned between the farm owners, Mr. Urner and representatives from Martin Marietta to determine who will be included within the zone of influence.

Mr. Anikis asked if there is someone to inspect each truck prior to leaving the quarry to ensure it is covered properly. A representative from Martin Marietta stated there is not one specific person assigned to that task. However, State law requires that all trucks must be covered. Mr. Anikis also asked if there is any interaction between Martin Marietta and the truck drivers to encourage the drivers to obey the speed limits. A representative from Martin Marietta stated that a meeting is held with the truck owners and/or drivers to discuss speed, jake-braking, load covering, conduct on the radio, etc. Signs are also posted for the drivers reminding them to weigh their loads, cover their load, obey the speed limits, etc.

Motion and Vote: Mr. Reiber made a motion to recommend to the Board of County Commissioners approval based on Staff's recommendation #3 as presented and to approve the "IM" zoning overlay contingent upon including the additional farm sites and wells as determined by Staff and that an emergency preparedness plan be prepared and implemented so there will be no loss of livestock on the farm operations. The plan must be finalized prior to final approval. Seconded by Ms. Parrish.

Comment before the vote: Mr. Wiley recommended that the emergency preparedness plan should include the input of farmers that will be directly affected.

Amended Motion: Mr. Reiber amended his motion to include Mr. Wiley's comment. Ms. Parrish concurred for the second. The motion passed with Mr. Reiber, Ms. Parrish, Mr. Moser and Mr. Wiley voting "Aye" and Mr. Ecker voting "Nay". Mr. Kercheval abstained.

RZ-07-008 – Bowman 2000 LLC

Ms. Baker presented for review and recommendation a map amendment for property located at 18400 Precision Place. The applicant, Bowman 2000 LLC, is requesting a change in zoning from IR – Industrial Restricted to HI-1 – Highway Interchange 1 for approximately 17.4-acres of property. A public hearing was held on November 26, 2007. There was no one who spoke in favor of or in opposition to the rezoning request. The applicant is claiming there is a change in the character of the neighborhood and a mistake in the original zoning of this property. With regard to a change in the character of the neighborhood, the applicant must define the neighborhood. The applicant defined the neighborhood as being approximately one mile to the east and west and $\frac{3}{4}$ of mile to the north and south. After hearing the information provided by the applicant during the hearing, Staff believes there is a broadness to their definition of the neighborhood; however, it is not entirely unreasonable given some of the information provided at the hearing. The applicant is required to define the change and if the change in the neighborhood was substantial. Staff does not believe there has been a case made proving a substantial change. The applicant presented information that they believe that a mistake was made in the original zoning of the property in 1976 and the error was perpetuated in the 1995 highway interchange rezoning. Staff has analyzed this information and believes that the applicant has made a case to prove that a mistake was made in the original zoning.

Discussion: Mr. Moser asked if this property abuts the Mack Truck property and what that property is zoned. Ms. Baker stated that the property does abut the Mack Truck property which is zoned IG – Industrial General. Mr. Moser stated his opinion that there was a change in the neighborhood and not a mistake in the original zoning of the property. The property was originally zoned IR at the request of the property owner and the land use was still the same when the highway interchange rezoning was done. He stated his opinion that leaving the zoning as it originally was could not be a mistake.

Ms. Parrish asked if Staff believes that the original zoning in 1976 was a mistake. Ms. Baker stated that in 1976 the Planning Commission recognized that the use being proposed was allowed under the Highway Interchange zoning so there was no reason to change the zoning.

Mr. Moser stated that the Highway Interchange zoning is a more restrictive use and it is the County's desire to attract higher paying jobs to the area. Ms. Baker noted that a determination as to the appropriateness of the current zoning and consistency with the surrounding area should be taken into consideration. Another consideration should be to determine if the zoning meets the goals and objectives that are trying to be accomplished in that region.

Mr. Reiber noted that this property abuts other properties, not just Mack Truck, that are zoned HI-1. Mr. Moser agreed, however, he believes that another fast-food restaurant would locate here rather than a business that would bring higher paying jobs to the area. Mr. Moser stated his opinion that a change in the character of the neighborhood would be a more appropriate reason for the change in zoning.

Motion and Vote: Mr. Moser made a motion to recommend approval to the Board of County Commissioners based on a change in the character of the neighborhood. Seconded by Mr. Reiber. Unanimously approved. Mr. Kercheval abstained.

FCO-07-001– Amendments to the Forest Conservation Ordinance

Mr. Stachoviak presented for review and recommendation 55 separate changes to the text of the Forest Conservation Ordinance. The proposed changes were distributed to 18 engineering/surveying firms, the Maryland Department of Natural Resources Coordinator and the State Forest Conservation Program

Coordinator. The proposed changes were presented at a public hearing on November 26, 2007. The following are substantive changes that are proposed to the Ordinance: a) Amendment of the Exemption section to extend the declaration of intent language prohibiting the transfer of a lot to a non-family member from 5 years to 10 years for consistency with the County's Subdivision Ordinance; b) Amendment of the non-compliance fee from 30 cents per square foot to an amount to be established by a resolution of the Board of County Commissioners; c) Amendment of the Forest Stand Delineation article to be simplified by stating "Intermediate" delineations are NOT recognized; d) Amendment of the payment-in-lieu of planting amount for administrative efficiency, to an amount that is periodically established by resolution of the Board of County Commissioners; and e) Amendment of the Surety article to require a 15% contingency be added to the surety amount to encourage quality planting and improved maintenance. Mr. Stachoviak noted that the amendment of the family member declaration of intent does not change, limit, or regulate existing subdivision rules regarding residential lots for immediate family members. It only addresses exemption from the Forest Conservation Ordinance of the sale or transfer of residential lots to individuals who are immediate family members. It is also intended to be consistent with the Subdivision Ordinance which prohibits, for 10 years, conveyance of lots on a private road to non-family individuals. During the public hearing, Mr. Laird supported the amendment to the Ordinance. He stated his opinion that the payment-in-lieu of on-site planting or retention is not consistent with the intent of the State Forest Conservation Act. Mr. Fred Frederick of Frederick, Seibert & Associates commented for the record that street trees should be permitted to be planted for credit under the Ordinance. Mr. Stachoviak noted that all amendments to the County Forest Conservation Ordinance require review and approval by the Department of Natural Resources. Accordingly, Marion Honezcy, the State Forest Conservation Coordinator, reviewed the proposed amendment and stated that the proposed language meets the intent of the Forest Conservation Act. In summary, there was no opposition to the proposed amendments expressed during the hearing. Staff agrees there is merit to allowing credit for planting of street trees as a permissible step in the priority sequence for afforestation or reforestation. Due to a variety of issues including long-term maintenance responsibility, Staff will evaluate this request upon the Engineering Department completing the update of the County road standards and will present a future text amendment if it is determined such a proposal will not create any conflicts. Staff is of the opinion that the amendment to Article 13.2 Surety for a 15% contingency has merit, since a surety claim, if necessary, will likely occur four or more years after its issuance. The County recently claimed its first surety, originally issued in 2003. We will not know if the amount will be sufficient to complete the project until it is put out for bid in early 2008. Staff believes that the proposed changes should be adopted as presented. As previously noted, all amendments were reviewed as required by law by the Department of Natural Resources State Forest Conservation Program Coordinator and found to meet the intent of the Maryland Forest Conservation Act.

Discussion: Mr. Kercheval asked Mr. Weibley, Washington County Soil Conservation District, questions regarding a letter that was submitted by his office for expenses related to the Forest Conservation requirements. Mr. Kercheval expressed his concern with regard to the increase from 10 cents per square foot to 30 cents per square for the payment-in-lieu fee. There was a brief discussion with regard to the expenses, fees that should be charged, and maintenance issues.

Mr. Don Spickler, member of the Board of Zoning Appeals, former member of the Planning Commission, and a member of Board of Supervisors for the Soil Conservation District, spoke on behalf of the Soil Conservation District. He believes there are maintenance issues that should be addressed to ensure replacement of trees that do not survive.

There was a brief discussion with regard to the length of time that a surety bond should be held.

There was a brief discussion with regard to the increase from 10 cents per square foot to 30 cents per square foot for the payment-in-lieu fee. Members were split in their discussion with regard to how much the fee should be; however, Mr. Stachoviak noted that the Board of County Commissioners would be responsible for setting this fee. Mr. Moser believes the increase to 30 cents per square foot is reasonable. He also believes there is merit to giving credit to developers for street trees. Mr. Ecker expressed his opinion that the fee should be 20 cents per square foot and an additional year should be added to the 2-year surety bond. Ms. Parrish and Mr. Wiley expressed their opinions that additional financial information is needed to make a decision on the amount.

Motion and Vote: Mr. Moser made a motion to recommend approval of the text amendment to the Board of County Commissioners. Seconded by Ms. Parrish. Unanimously approved. Mr. Kercheval abstained.

City Annexations

Mr. Thompson began a discussion with regard to the annexations requested by the City of Hagerstown. In accordance with House Bill 1141, the Board of County Commissioners must review the annexation requests to determine if "express approval" will be granted to allow a different zoning designation that could create a greater density than is currently allowed by the County's Comprehensive Plan. Mr. Thompson noted that the BOCC must review and respond to the annexation requests within 30 days of receipt of the request. Article 66B of the Maryland Annotated Code does not require the Planning Commission's review and recommendation of these requests. Mr. Thompson believes that the Planning Commission should review and comment on these requests; however, due to time constraints it is not always feasible to present these requests to the Planning Commission. He stated he will continue to bring these requests to the Planning Commission as time allows.

At the current time, there are three annexation requests scheduled to go before the BOCC in the near future. The first request is for property located on Haven Road. A previous request to annex this property created an enclave, which is not allowed by the State. Therefore, the City is attempting to correct this issue. The second request is for property located on Salem Avenue/Cearfoss Pike. The property is currently zoned HI-1. The City is proposing a Commercial zoning designation, which would be consistent with the County's Comprehensive Plan. The third request is for property located at the northeast quadrant of Dual Highway and I-70. The property is currently zoned HI-1 and the City is proposing their new zoning designation of Business Employment. The developer is proposing to annex the property so that City water and sewer would serve the site. Mr. Thompson noted that depending upon the zoning designation given by the City, it may not be consistent with the County's Comprehensive Plan. In addition, the proposed is not consistent with the City's proposed Comprehensive Plan Update.

UPCOMING MEETINGS

1. Regular Planning Commission meeting, Monday, February 4, 2008, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Conference Room 1, Hagerstown

ADJOURNMENT

Mr. Moser made a motion to adjourn the meeting at 10:20 p.m. Seconded by Mr. Ecker. So ordered.

Respectfully submitted,

George Anikis, Chairman