

**WASHINGTON COUNTY PLANNING COMMISSION
REGULAR MEETING – April 6, 2009**

The Washington County Planning Commission held its regular meeting on Monday, April 6, 2009, in the Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown.

Members present were: Chairman George Anikis, Andrew Bowen, Terry Reiber, Clint Wiley and Ex-Officio James F. Kercheval. Staff members present were: Chief Planner Timothy A. Lung, Senior Planners Lisa Kelly and Jill Baker, Land Planner Sara Edelman and Administrative Assistant Debra Eckard. Mr. Ecker and Ms. Parrish were not in attendance.

CALL TO ORDER

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

MINUTES

Mr. Bowen made a motion to approve the minutes of the March 2, 2009 meeting as amended. Seconded by Mr. Reiber. Unanimously approved.

NEW BUSINESS

- AGRICULTURAL LAND PRESERVATION DISTRICT APPLICATIONS

Ms. Edelman presented for review and recommendation nine (9) Agricultural Land Preservation District applications for the establishment of 10-year agricultural districts. Ms. Edelman noted that the Washington County District Program was established as a County program on January 13, 2009. The applications being presented this evening have previously been approved by the Agricultural Advisory Board. Ms. Edelman stated that the County benefits from the District Program by the preservation of agricultural culture, preservation of land from development, and limits the need for infrastructure. The Program benefits the landowner with the opportunity to apply for easement from the State, tax credits and protection under the Right to Farm Ordinance. Ms. Edelman presented maps and a brief description of each property applying for the 10-year agricultural district.

- 1) Wilmarie Hopkins, 202.41-acres located on Licking Creek Road; Beef farm; AD-08-005
- 2) Robert Jennings Smith: 97.83-acres located on Big Spring Road; Crop farm; AD-08-007
- 3) Rodney and Mariann Saloom, 51.04-acres located on Seibert Lane; Crop farm; AD-08-013
- 4) Maria Salgado, 152.70-acres located on St. Paul Road; Crop farm; AD-09-002. Ms. Edelman explained that the total parcel acreage is 162.70-acres; however, Ms. Salgado has excluded 10 acres from the district. Ms. Salgado is proposing to put 5 acres into the Historic Preservation overlay and 5 acres she is proposing to subdivide.
- 5) Alice Backman, 51.28-acres located on Manor Church Road; forest land; AD-08-003
- 6) Donald Beard, 139.88-acres located on Mill Point Road; Dairy farm; AD-08-011
- 7) Baker Farm, LLC, 115.99-acres located on Benevola Newcomer Road; Pasture and flood plain; AD-06-006;
- 8) Payne/Holder Farm, 110.52-acres on Monroe Road; AD-08-004. Ms. Edelman stated that the Payne/Holder Farm was previously in a District; however, they had to terminate the district at the end of their 10-year district due to estate issues. Fifty (50) acres has been taken out for development.
- 9) Anitetam Farm, 71.25-acres located on Ringgold Pike; Crop farm; AD-06-011

Comments: Mr. Kercheval requested that in future presentations, Staff calculate the number of potential developable lots that would be permitted if the land was not being protected through the Agricultural District Program.

Motion and Vote: Mr. Bowen made a motion to approve the Agricultural Land Preservation District applications as presented. Seconded by Mr. Wiley. The motion passed with Mr. Bowen, Mr. Wiley and Mr. Reiber voting "Aye". Mr. Kercheval abstained.

- SUBDIVISIONS

Downsville E, F & G, LLC – Lot 1 (S-09-012)

Mr. Lung presented for review and approval the subdivision plat for Lot 1 of the Downsville E, F & G, LLC located on the northeast corner of Downsville Pike and Rench Road in the Friendship Technology Park. This project has been given a "fast-track" designation by the Washington County Economic Development Commission. The property is zoned ORT – Office, Research and Technology. The owners of the property will be conveying the parcel to T. Rowe Price for a proposed remote support center. Access to the lot and 30-acres of remaining lands will be via a new public cul-de-sac street (Progress Lane), which will be approximately 650 linear feet. The new street will be dedicated to the County. Public water will be provided by the City of Hagerstown and public sewer will be provided by the Washington County Department of Water Quality. Forest Conservation requirements will be met through a combination of on-site forest retention and a payment-in-lieu. The Forest Conservation Plan is part of the Site Plan currently under review by the County Planning Department. However, the Forest Conservation Plan should be approved as part of the subdivision plat approval. All reviewing agencies have reviewed and commented

on the subdivision plat; however, approvals are pending. The “fast-track” designation permits the project to be presented to the Planning Commission prior to receiving agency approvals. Mr. Lung stated that most of the comments relate to the new public street that will involve the installation of utilities and the relocation of utility easements as well as storm water management facilities to handle the run-off from the street. Mr. Lung noted that there are two different consultants working on this project.

Discussion: Mr. Reiber made an inquiry regarding the cul-de-sac being constructed per County specifications. Mr. Lung stated that the road will be designed in accordance with the County’s public road standards.

Motion and Vote: Mr. Bowen made a motion to approve the Subdivision Plat contingent upon all agency approvals. Seconded by Mr. Reiber. Unanimously approved.

Discussion: Mr. Reiber made an inquiry regarding the proposed Forest Mitigation requirements. Mr. Lung stated that according to the original plat submittal the developer is proposing on-site retention of .8-acre and a payment-in-lieu for 1.93-acres. He noted that the acreages may change depending on requested revisions and the impact on the retention area due to moving utility easements around for the proposed street. Mr. Lung clarified that the .8-acre retention was calculated with the easements included. No major changes are anticipated; however, there could be a slight change in the easement area and the amount of the payment-in-lieu.

Ms. Kelly interjected that she had updated calculations for the Forest Conservation mitigation as reflected on the site plan. She stated that .68-acres would be retained on-site and a payment-in-lieu would be based on 1.13-acres or \$4,922.28. The .68-acres reflect the removal of the easement in question. Mr. Reiber questioned the calculations because the figures reflected on the site plan are less than those shown on the subdivision plat. Mr. Lung stated that Staff would need to review the Forest Conservation Worksheets to insure that the site plan information matches the subdivision plat information and to determine the appropriate amounts. He noted that it is not unusual for economic development projects to be approved based entirely on payment-in-lieu to meet Forest Conservation Ordinance requirements. Mr. Wiley expressed his opinion that the Forest Conservation proposals should be approved even though changes to the calculations may be necessary.

Motion and Vote: Mr. Reiber made a motion to approve the amended Forest Conservation mitigation of on-site retention and payment-in-lieu. Seconded by Mr. Kercheval. Unanimously approved.

- SITE PLANS

T. Rowe Price (SP-09-013)

Ms. Kelly presented for review and approval a Site Plan for T. Rowe Price for property located on the northeast corner of Downsview Pike and Rench Road in the Friendship Technology Park. This project has been given a “fast-track” designation by the Washington County Economic Development Commission. The property is zoned ORT – Office, Research and Technology. The developer is proposing to construct a 58,500-square foot building that will include a warehouse and office space for a data center in Phase I on 14-acres. A future 58,500-square foot addition is proposed for a total of 117,000-square feet. Mechanical and electrical equipment areas with fencing are proposed adjacent to the building. Access to the site will be via a new public street named Progress Way. Public water from the City of Hagerstown and public sewer from the Washington County Department of Water Quality will serve the site. Parking required and provided will be 136 spaces. A reduction of the front building setback from 50-feet to 40-feet was granted by administrative approval from the Washington County Permits and Inspections Department for the construction of a guard house at the entrance. Building-mounted and pole-mounted lights are proposed on the site. One sign will be located at the entrance. A screened dumpster will be located to the rear of the building. Hours of operation proposed are 24 hours per day 7 days per week. There will be a total of 15 employees, split on 3 different shifts. Storm water management requirements will be met by the use of three storm water management ponds. Proposed landscaping includes Red Maple, Oak, Birch, Dogwood, Holly, Pine, and Leyland Cypress trees, azaleas, juniper and numerous ornamental fountain grasses. Forest Conservation Ordinance requirements were previously discussed during the presentation of the Subdivision Plat. Staff will verify the final mitigation calculations. As previously noted during the Subdivision Plat presentation, this project has been designated as a “fast-track” designation. Approvals from all agencies are pending.

Discussion and Comments: Mr. Kercheval noted that the County does not want easements containing fiber optics in the roads due to future expansion and maintenance issues. Mr. Kercheval questioned how many lots would be served in the future by the cul-de-sac. Mr. Jason Divelbiss, attorney for the property owner Mr. Brad Fulton, stated that there are 50 acres of remaining lands and the street could serve as many as three lots in the future. Mr. Fulton noted that during recent discussions with the Department of Public Works and the Engineering Department, the fiber optics do not interfere with the roadway; however, there is interference between the potential storm water access and maintenance easement for one of the proposed storm water management facilities with the existing utility easement. Several options were discussed, including the elimination or relocation of the storm water management facility. Mr. Divelbiss noted that the Engineering Department expressed concern regarding the utility easement for the fiber optics overlapping with the roadway right-of-way. Mr. Kercheval made an inquiry with regard to the number of proposed parking spaces. Mr. Lung stated that the site plan meets the parking requirements based on the proposed use of the building. He noted that the proposed facility will be used for occasional training sessions. He also noted that the use could change in the future to an office complex, which

would require more parking spaces. Mr. Lung stated that a subsidiary plan was submitted by the developer to show how additional parking could be accommodated. Mr. Anikis asked if a fence would be located around the property. A representative of Century, the consultant, stated that T. Rowe Price requires a fence around the property. An 8-foot high chain-link fence is proposed. Mr. Anikis expressed his concern that the developer is using a chain-link fence next to a farm in a historic preservation zone. The consultant noted that the developer is proposing considerable screening around the property to protect the integrity of the farm. Mr. Anikis made an inquiry regarding the pole-mounted lighting being proposed. The consultant stated that a lighting plan has been added to the site plan, which shows there is no spillover to other properties. Mr. Anikis made an inquiry regarding the architectural appearance of the exterior of the proposed building. Mr. Kercheval stated that the exterior would be similar to the Lyles office building located on Marsh Pike, which is concrete construction.

Mr. Kercheval noted that the County is looking at future development of the property and the impact on the road network in this area. He expressed his opinion that the property owner needs to plan ahead with regard to roads and utilities. He stated that he is not opposed to the payment-in-lieu for commercial uses to meet Forest Conservation requirements; however, he believes that off-site retention in undevelopable areas on the property should be considered with future development of the site.

Motion and Vote: Mr. Kercheval made a motion to approve the site plan contingent upon all agency approvals. Seconded by Mr. Wiley. Unanimously approved.

North End Storage (SP-09-008)

Ms. Kelly presented for review and approval a Site Plan for North End Storage located along the north side of Leitersburg Pike, southwest of its intersection with Longmeadow Road. The developer is proposing to construct three mini-warehouse storage units on a 1.9-acre parcel zoned BL – Business Local. One access is proposed from Leitersburg Pike. No water or sewer facilities are proposed for the site. Hours of operation will be 24 hours per day, 7 days per week. There will be no employees on the site; however, assistance will be available at the John R. Oliver office site across Leitersburg Pike. No parking spaces are required and none will be provided. An 8-foot by 8-foot sign will be constructed at the entrance. Proposed lighting will be building mounted and no lights will be installed on the rear of the buildings. No trash receptacles will be provided. Forest Conservation requirements will be met by retention of 1.45-acres of forest on lands of John R. Oliver located across Leitersburg Pike behind the Oliver office building and existing storage buildings. The remaining .21-acre forest requirement will be met by a payment-in-lieu in the amount of \$914.76. Landscaping will be placed at the entrance of the site using spreading yews. Nineteen Leyland Cypress trees will be placed along the eastern property line bordering the Palmer property. The existing forest behind the Leyland Cypress will be retained to provide additional buffering. A 10-foot landscape buffer is proposed along the northern and western property boundary lines using existing forest located on the site. All agency approvals have been received.

Discussion: Mr. Kercheval made an inquiry regarding the setback on the west side of the property. He noted that the building will be set closer to the existing residence. Mr. Oliver, developer, stated that the existing residence is located on parcel of land that is currently zoned “BL” and the vacant property on the other side of the proposed warehouses is zoned residential. Therefore, the setback requirements are larger next to the residentially zoned property. Mr. Kercheval expressed concern regarding the buffering between the site and the existing residence. Mr. Taylor stated that trees will be planted to act as a buffer.

Motion and Vote: Mr. Reiber made a motion to approve the Site Plan and the proposed Forest Conservation mitigation requirements as presented. Seconded by Mr. Bowen. Unanimously approved.

OTHER BUSINESS

Fort Ritchie Master Plan Update

Mr. Lung presented a brief update of the Fort Ritchie Master Plan. COPT is planning to present their master plan to the Planning Commission in June.

Discussion: Mr. Kercheval stated that he has met with Mr. Hoffman, COPT representative, to discuss the progress of the master plan. He noted that due to the economic slowdown and environmental and topographic issues, revisions were needed to COPT’s original plans. Mr. Kercheval has suggested that COPT present their master plan to the Planning Commission at the Fort Ritchie site and include a tour of the site. COPT was amenable to the suggestion. The Planning Commission was in favor of the off-site meeting.

Mr. Anikis made an inquiry regarding the traffic study. Mr. Hoffman stated that the traffic study has been updated, finalized and approved and will be included in the package that will be submitted to the Planning Department at the end of April. Mr. Hoffman noted that plans will not be ready for presentation at the June meeting due to time needed for review by the Engineering Department and Soil Conservation District. However, COPT will try to present their master plan at the July Planning Commission meeting.

RZ-09-001 – Zoning Ordinance Text Amendment

Ms. Baker presented for review and recommendation Text Amendments for Articles 3, 4, 5A, 5B, 5C, 5D, 23 and 28A of the Zoning Ordinance. The text amendments were presented at a public meeting held on Monday, March 16, 2009. Comments were received from the Planning Commission as well as the public

and revisions to the text amendments were made based on those comments. The first proposed revision is to Section 4.22 "Commercial Communication Towers", the Abandonment clause, which the County does not currently have in the Ordinance. Ms. Baker presented two options for the Planning Commission's consideration. The first option mirrors Frederick County's Ordinance, which requires a surety to be posted by the tower owner upon approval of the communications tower. The second option is similar to the Abandonment clause proposed for the Wind Energy Systems. This option states, "the Zoning Administrator may issue a Notice of Abandonment to the Owner of the Tower that is deemed to be abandoned. The Owner shall have the right to respond in writing to the Notice of Abandonment setting forth the reasons for operational difficulty and providing a reasonable timeframe for corrective action, within thirty (30) days from the date of the Notice. If the Owner fails to remove the Tower and related equipment, the Administrator may pursue legal action to have the Tower removed at the Owner's expense."

Ms. Baker noted that a surety could be held for many years without the tower being abandoned. She believes that tracking the surety could be problematic for everyone involved. Staff recommends the second option listed above.

Discussion: Mr. Kercheval questioned if the Tower Owner has been notified of the abandonment, could they be fined (like a zoning infraction) rather than taking the Owner to court. He expressed concern regarding the length of time to get the case to court. Ms. Baker noted that the Owner has the right to respond to the Abandonment Notice and corrective action taken within thirty (30) days from the date of the Notice. Mr. Kercheval believes that a fine should be imposed rather than immediate legal action in court.

Ms. Baker proceeded with the review of proposed changes in accordance with comments received during the public meeting. She noted that the definition of Grade Plane is proposed for change. The new language has been taken from the County's Building Codes, which would create consistency between the Zoning Ordinance and County Building Codes.

Comment: Mr. Reiber requested that Staff insure that enforcement issues are addressed per Mr. Kercheval's comments and concerns. Ms. Baker stated she will work with the Zoning Administrator to develop the appropriate language, which will be presented to the BOCC at their public hearing on this amendment. Mr. Anikis noted that if both options are presented to the BOCC, a change needs to be made in Option A from "property" owner to "tower" owner.

Recommendation and Vote: The Planning Commission recommends that the Board of County Commissioners approve the text amendment RZ-09-001 with a change in the language to impose a fine rather than immediate legal action in court, per Mr. Kercheval's comments, and with the new definition of Grade Plane as proposed from the County's Building Codes. The recommendation was approved with a 3-0 vote with Mr. Wiley, Mr. Bowen and Mr. Reiber voting "Aye". Mr. Kercheval abstained.

SO-09-001 – Text Amendments to the Subdivision Ordinance

Ms. Kelly presented for review and recommendation Text Amendments to Sections 202, 301, 302, 306, 307, 309, 310, 314, 315, 318, 404 and 602 of the County's Subdivision Ordinance. The text amendments were presented at a public meeting held on Monday, March 16, 2009. Comments were received from the Planning Commission as well as the public and revisions to the text amendments were made based on those comments. Ms. Kelly noted that public comment focused on the proposed recordation time of preliminary/final and simplified plats. The amendment proposes that all plats must be recorded with the Clerk of the Circuit Court within ninety (90) days of plat approval instead of the current two (2) year period.

Comments: Mr. Wiley expressed his opinion that the ninety days may not be allow sufficient time for the recordation; however, he does not believe that the time should be as long as two years.

Mr. Bowen agreed with Staff's recommendation for the 90 day recordation timeframe.

Mr. Kercheval expressed his opinion that he does not agree with the ninety (90) day timeframe, but he also believes that two (2) years is too long.

Discussion: Mr. Anikis questioned the penalty if the plat is not recorded within the 90 days. Ms. Kelly stated that the plat would be null and void after ninety (90) days. Mr. Bowen asked if an extension could be requested. Ms. Kelly stated that Staff is not proposing that option. Mr. Lung stated that current policy allows the Planning Director, in some cases, to re-approve plats that have gone past the recordation period without the plats being presented again to the Planning Commission. He noted that plats that have been approved, but not recorded, for a long period have been presented to the Planning Commission for their re-approval. Staff is concerned that standards and physical features may have changed over time. Members discussed the public's concern regarding financial issues and meeting deadlines. Mr. Bowen suggested a six (6) month timeframe for recordation. Ms. Kelly stated that the City of Hagerstown follows a six (6) month timeframe. Staff noted that if there is a problem, the developer will usually request that plat approval be withheld until they are ready to proceed.

Recommendation and Vote: The Planning Commission recommends that the Board of County Commissioners approve the text amendments as proposed in SO-09-001, with the exception of Section 315 to be amended from ninety (90) days to six (6) months for recordation of preliminary/final and

simplified plats. The recommendation was approved with a 3-0 vote with Mr. Wiley, Mr. Bowen and Mr. Reiber voting "Aye". Mr. Kercheval abstained.

RZ-09-002 – Text Amendment "IM" Zoning District

The Planning Commission reviewed Text Amendment RZ-09-002 for the "IM" Industrial Mineral zoning district with regard to fencing requirements. The text amendment was presented at a public meeting held on Monday, March 2, 2009. Comments were received from the Planning Commission as well as the public and revisions to the text amendments were made based on those comments. The only recommended change to the proposed text amendment was that all extraction areas, active or inactive, shall be fenced and posted if the excavation of slopes is steeper than one (1) foot vertical to two (2) feet horizontal (2:1 slope). The original text presented at the public meeting recommended a 3:1 slope.

Recommendation and Vote: The Planning Commission recommends that the Board of County Commissioners approve the text amendment RZ-09-002 as amended with a 2:1 slope. The recommendation was approved with a 3-0 vote with Mr. Wiley, Mr. Bowen and Mr. Reiber voting "Aye". Mr. Kercheval abstained.

RZ-09-004 – Text Amendment (Small Wind Energy Systems and Solar Collection Systems)

The Planning Commission reviewed Text Amendment RZ-09-004 to add Sections 4.24 (Small Wind Energy Systems) and 4.25 (Solar Collection Systems) to the Zoning Ordinance. The text amendment was presented at a public meeting held on Monday, March 2, 2009. Comments were received from the Planning Commission as well as the public and revisions to the text amendments were made based on those comments.

Discussion: Mr. Lung began reviewing the changes made following the public meeting. He noted that the Planning Commission members questioned the location of the wind towers located in the front yard. Mr. Lung clarified that the wind towers cannot be located within the front yard setback. For example, a house could exceed the minimum front yard setback requirement and a wind tower could be located in front of the house, but outside of the minimum front yard setback. Mr. Kercheval does not believe the proposed amendment addresses the Commission's concern. He expressed his opinion that if a house is located a greater distance from the road or other residences, it may be appropriate to have a windmill in front of the house otherwise the wind towers should be located behind the house.

Mr. Kercheval began a discussion regarding shading of solar panels by neighboring properties. He noted that this has become an issue in other communities where a neighbor's tree (or other obstacle) could block the sun from reaching the solar panel. Mr. Kercheval believes there are solar easements that can be purchased from other property owners to ensure that the sunlight will not be blocked from the solar panels by controlling the height of other structures or the planting of trees and that the County should not become involved with such issues. He requested that Staff investigate this issue further and include language in the text amendment that the County and/or adjoining property owners are not liable for sunlight being blocked from a neighboring solar panel.

Mr. Wiley expressed his opposition regarding the proposed language dealing with the size limitations of solar arrays. He believes the size and number of arrays used should be dependent upon the structural integrity of the building, especially for industrial or commercial application. Mr. Anikis concurred with Mr. Wiley's comments.

Mr. Anikis clarified his concern regarding electromagnetic interference on emergency communication systems from Small Wind Energy Systems. He noted that his concern was general in nature and not specifically aimed at emergency communication systems. He further explained that as a rotor gets older, his concern was that it may interfere with television, radio or cell phones. He also expressed concern about excessive noise that may be generated by equipment that is not adequately maintained.

Mr. Kercheval questioned the proposed language in # 9 of Section 4.25 (Solar Collection Systems) regarding the Historic District Commission's review of all permit applications for collection systems within the HP, AO1 and AO2 zoning districts or adjacent to properties listed in the Washington County Historic Sites Survey. Mr. Kercheval expressed his opposition to the proposed language because the HDC would not have the authority to approve or deny any permit applications.

Mr. Anikis requested the Commission's support in recommending to the BOCC the implementation of property tax credits for anyone who implements solar or windmill systems in the County. He noted that five counties in Maryland currently give property tax credits for this type of improvements. He gave a brief description of each county's tax credit rules.

Mr. Kercheval asked if there was language included in the text amendment for the maintenance and upkeep of the wind towers.

Recommendation and Vote: The Planning Commission recommends that the Board of County Commissioners approve the text amendment for RZ-09-004 with changes as previously discussed. Recommendations for changes include: 1) language to clarify that wind towers should not be located in front of a house unless the house is a greater distance from the road or other residences; 2) language that the County and/or adjoining property owners are not liable for sunlight being blocked from a neighboring solar panel and/or language for solar easements; 3) the footprint limitation for industrial/commercial solar arrays; and 4) clarification of the electromagnetic interference and excessive

noise that may be generated by equipment that is not adequately maintained. The recommendation was approved with a 3-0 vote with Mr. Wiley, Mr. Bowen and Mr. Reiber voting "Aye". Mr. Kercheval abstained.

Mr. Reiber expressed his opinion that the Planning Commission is not being given all the facts and information necessary to make the best decisions for the "economic environment" of the County. He cited the T. Rowe Price "fast-track" site plan and subdivision plat that was presented this evening as an example. His concerns included the additional acreage that could utilize the cul-de-sac in the future, reserving right-of-way for the County's use in the future and the impact on roads and utilities. Mr. Kercheval does not believe that anything is being held back. However, he believes that Staff should be prepared to present the "most up-to-date comments" as possible. A brief discussion followed concerning this issue and upcoming procedural changes for plan reviews and its impact on the "fast-track" process.

UPCOMING MEETINGS

1. Planning Commission Workshop Meeting, Wednesday, April 15, 2009, 3:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown
2. Planning Commission Regular Meeting, Monday, May 4, 2009, 7:00 p.m., Washington County Administrative Annex, 80 West Baltimore Street, Hagerstown

ADJOURNMENT

Mr. Reiber made a motion to adjourn the meeting at 9:05 p.m. Seconded by Mr. Bowen. So ordered.

Respectfully submitted,

George Anikis, Chairman