

Minutes of the County Commissioners of Worcester County, Maryland

Work Session

April 10, 2007

James L. Purnell, Jr., President
Louise L. Gulyas, Vice President (Absent)
Judith O. Boggs
Linda C. Busick
James C. Church
Robert L. Cowger, Jr.
Virgil L. Shockley

The Commissioners, with Commissioner Gulyas absent, held a work session to discuss the implementation of the Comprehensive Plan and update of the Zoning Ordinance with Development Review and Permitting (DRP) Director Ed Tudor and Deputy Director Phyllis Wimbrow and Comprehensive Planning Director Sandy Coyman. Mr. Tudor reviewed the purpose of the meeting and advised that the Commissioners do not need to decide on intricate details of the issues, but rather to provide general direction with regard to six items as follows: Administrative Hearing Officer; Semi-Annual Review of Rezoning Cases; Elimination of the E-1 Estate District; Potential Split of the A-1 Zoning District into Two Separate Agricultural Districts; Transfer of Development Rights Program, and Workforce Housing (Inclusionary Zoning).

Mr. Tudor stated that language in Article 66B (Land Use) of the State law allow for the provision of an Administrative Hearing Officer (AHO) to help streamline Code administration by reducing the number of cases requiring Board of Zoning Appeals (BZA) approval; reducing costs for the citizens; and condensing staff involvement. He stated that the AHO would be used to address minor, usually uncontested, issues that would otherwise come before the BZA. He further stated that the County would not need to hire additional staff for this position as the current staff would be relieved of certain tasks involving processing by the BZA. Following some discussion and upon a motion by Commissioner Boggs, the Commissioners unanimously endorsed creation of the position.

The Commissioners reviewed the proposal for the semi-annual review of rezoning cases. Mr. Tudor explained that implementation of this item would change the current policy of accepting rezoning applications any time to limiting their acceptance to once every six months. He stated that this procedure would be consistent with the County's current law on growth allocation requests and amendments in the Atlantic Coastal Bays Critical Area (ACBCA). He further stated that implementation of this procedure would provide a more holistic understanding of the impacts of proposed rezoning requests. Commissioner Church expressed concern that this process may not be best for applicants due to potential delays. Commissioner Shockley recommended increasing the review process to once every four months. In response to a question from Commissioner Boggs, Mr. Tudor explained that the County typically receives only 3 to 6

applications each year. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously endorsed the tri-annual review of rezoning cases.

The Commissioners discussed eliminating the E-1 Estate District as proposed by the Comprehensive Plan. Mr. Tudor listed the pros of eliminating the E-1 district as follows: provides opportunity to use Transfer of Development Rights (TDRs) out of high hazard areas; removes development from the Estate District, where approximately 80% of the land area is in the inundation zones for hurricanes and would be under eight to 18 feet of water if hit by a storm surge; consistent with the Hazard Mitigation Plan to locate new development outside of high hazard areas; much of the Estate District lies along Sinepuxent Neck, which has issues with traffic, the need for intersection improvements and projected low levels of service; and the zoning district has proven to be ineffective at creating “real” clustered housing as a rural to urban transition area. Mr. Tudor also reviewed the cons, which include the following: new zoning designations could be construed as an unpalatable down-zoning; approximately 38% of the Estate District has already been designated as a growth area, existing developed area, or village in the Comprehensive Plan and would therefore be developable while the remaining 62% would be affected by the change; and may force premature, haphazard development in the area as landowners attempt to develop in advance of the zoning change. Mr. Tudor stated that this change in zoning would only affect undeveloped parcels in the E-1 zone that do not have plan approval for subdivisions. In response to a question from Commissioner Boggs, Mr. Tudor stated that existing platted lots would not lose their rights for a home to be built on each lot. He stated that the greatest significance would be the impact on large, undeveloped tracts of land that developers may envision as sites for future subdivisions. In response to a question from Commissioner Church, County Attorney Edward H. Hammond, Jr. stated that if the Commissioners eliminate the E-1 zone, property owners will still retain reasonable uses of their properties; and, therefore, such action would not constitute a taking. Chief Administrative Officer Gerald T. Mason suggested keeping the zoning category, just not adding any new E-1. Ms. Wimbrow proposed implementing a sunset provision to phase out the E-1 district. Commissioner Boggs concurred. Commissioner Shockley directed staff to provide the Commissioners with the number of acres of property zoned E-1 that are located in the Atlantic Coastal Bays Critical Area (ACBCA). The Commissioners agreed to delay further discussion on the matter until after review of the requested information.

The Commissioners reviewed the proposal to split the A-1 Agricultural Zoning District into two separate Agricultural Districts. Mr. Tudor outlined the proposal and stated that it would allow for greater consistency of land uses adjacent to the existing villages, growth areas and existing development. He stated that currently there are 14 principal uses, 54 special exception uses, and 12 accessory uses permitted in the A-1 district, a number of which border on quasi-commercial uses that are not always compatible with agriculture and forestry. Mr. Tudor explained that separating the current A-1 district into two separate districts would allow for a district with some of the more intense uses to be located adjacent to the extremely developed areas and growth areas, and more purely agricultural uses to be located in a district more removed from these areas. Mr. Tudor reviewed the pros and cons associated with the proposal. Commissioner Shockley stated that equipment repair shops, though commercial in nature, are vital for the success of farmers and should remain as approved uses within both agricultural zones. Following some discussion and upon a motion by Commissioner Boggs, the

Commissioners unanimously directed staff to submit a proposal for the division of the A-1 zone into two separate agricultural zones for their consideration.

Mr. Tudor summarized the pros and cons of a proposed Transfer of Development Rights (TDR) program whereby development rights are transferred from rural areas to growth areas, known as “receiving areas.” He stated that the pros include preservation of farmland without the direct purchase of easements and at a fraction of the cost; adds or maintains value for agricultural lands; enables TDRs out of Estate zoned high hazard areas; spreads the economic benefits of development to rural land owners while preserving rural character; and provides a good tool to increase density in growth areas while preserving agricultural and/or other sensitive areas. He stated that the cons include difficulty in establishing values for development rights without significant down-zoning in receiving areas; adds an additional layer of review for certain projects; and requires additional staffing to implement and track the program. Mr. Coyman stated that most counties using a TDR program have very low density growth areas. Commissioner Church stated that this proposal only benefits large developers who can afford to buy and control the development rights. Mr. Coyman explained that a TDR program spreads wealth by funding agricultural preservation and retaining value in the prior E-1 zoned properties. Mr. Tudor explained that since developers do not currently build to permitted density, a TDR program would require artificially lowering permitted density in order to create demand for the purchase of development rights. Mr. Hammond stated that receiving areas work best if they are developed within high density apartments served by public water and sewer. Ms. Wimbrow stated that this program would benefit farmers who are concerned about losing equity in their properties as they do not have the same development rights as those residing in the R-1 Residential zoned areas. She further suggested perhaps allowing the transfer of development rights between the two agricultural zones. Following much discussion and upon a motion by Commissioner Boggs, the Commissioners directed staff to develop proposed language for a TDR program as suggested by Ms. Wimbrow to transfer rights between the two agricultural zones.

Mr. Tudor outlined the proposal for Workforce Housing (Inclusionary Zoning), a program whereby developers of residential projects are required to provide a certain percentage of units to be available at sales or rental prices that meet a particular price point as identified by the local jurisdiction as “affordable.” He stated that incentives are typically given to developers to provide affordable housing within the developments, which often include either increased density, tax relief or expedited reviews. Mr. Tudor explained that density bonuses and expedited reviews are not valid incentives in Worcester County where most projects are not built to permitted density and review times are relatively short. Mr. Tudor reviewed the pros of the program, which include addressing a genuine public need; good public policy; important in attracting and maintaining government employees and new businesses to the area. Mr. Tudor stated that down sides to the program include a sizeable investment in additional staff and equipment to implement and then monitor the program over a long period of time; adds an additional layer of review; may require significant down-zoning or reductions in allowed density to be effective; and will likely require State authorization if tax incentives are used to facilitate the program. Mr. Tudor stated that the lack of affordable workforce housing is an issue throughout the country, and while federal programs are seeing some success in jurisdictions where developers can save thousands of dollars in fees by providing workforce housing, Worcester County’s fee structure is in the hundreds of dollars and therefore may not serve as an

incentive to local developers to provide workforce housing. Commissioner Boggs stated that she had hoped that the two-story mobile homes would provide an affordable housing alternative in Worcester County. She further suggested that the new Katrina Cottages being built in Mississippi after Hurricane Katrina in 2005 may provide a good model for affordable workforce housing. Commissioner Purnell suggested acquiring properties through tax sale to be developed for workforce housing. Mr. Hammond stated that inclusionary zoning is not successful in rural counties and suggested consideration for establishment of an "Office of Housing," a land bank, loan program and rehabilitation program for fixing up older homes. Commissioner Church suggested consulting with the Association of Realtors who have studied this problem and suggested solutions. Commissioner Boggs suggested making people more aware of federal and state programs. Following much discussion and upon a motion by Commissioner Boggs, the Commissioners unanimously agreed to eliminate discussion of inclusionary zoning and to investigate other options for the provision of workforce housing within the County.

The Commissioners resumed their discussion on elimination of the E-1 Estate zone. Mr. Coyman advised the Commissioners that 12,400 acres of land are located in the E-1 zone. He stated that roughly 8,000 of those acres are currently undevelopable while approximately 5,000 acres could be developed and would be affected by a change in zoning. Assistant Chief Administrative Officer Kelly Shannahan stated that the elimination of the E-1 Estate Zone, the creation of two agricultural zones and the TDR program may all work in concert to create an appropriate compromise, as the E-1 zoned properties could be rezoned to the suburban agricultural zoning category, which could be designated as a receiving zone for development rights from the rural agricultural zone, thereby preserving the ability to subdivide in the former E-1 zoned areas. Following much discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously agreed that there would be no new E-1 zoned areas and the existing E-1 zoning would sunset after a certain time, after which the zoning of those properties would revert to some other zoning designation, such as the suburban agricultural district.

The board adjourned to meet again on April 17, 2006.