

**Worcester County Planning Commission
Work Session Meeting Minutes**

Meeting Date: March 8, 2018

Time: 1:00 P.M.

Location: Worcester County Government Office Building, Room 1102

Attendance:

Planning Commission

Mike Diffendal, Chair

Jay Knerr, Vice Chair

Marlene Ott

Betty Smith

Jerry Barbierrri

Rick Wells

Staff

Maureen Howarth, County Attorney

Ed Tudor, Director, DDRP

Phyllis Wimbrow, Deputy Director, DDRP

Jennifer Keener, Zoning Administrator

Robert Mitchell, Director, DEP

I. Call to Order

II. Sectional Map Amendment

As the first item of business, the Planning Commission reviewed a proposed sectional rezoning of the MD Route 611 (Stephen Decatur Highway)/ South Point Road Corridor. Mr. Diffendal clarified for the members of the audience that were present that this was to be a work session where staff will be presenting information, and it was not a public hearing. He clearly stated that the Planning Commission will not be taking a vote on the proposal until Mr. Clayville could be present.

Mr. Tudor started by identifying the large format maps that were prepared by staff and made available for review. The first map illustrated the zoning district overlay and the second map had the zoning districts and the Critical Area designation overlay. Mr. Tudor reiterated that the properties in question are only the properties currently designated E-1 Estate District within the South Point area starting at MD Route 376 (Assateague Road) and heading in a southerly direction. The first item of discussion was the E-1 Estate District and R-1 Rural Residential District comparison spreadsheet. Mr. Tudor stressed the different uses that were allowed in the E-1 District such as poultry houses, hog houses, and grain dryers, which many people consider a nuisance, and which are not allowed at all in the R-1 Rural Residential District. He stated that agriculture and the other uses he outlined are permitted principal uses, which means that as long as structures are meeting the minimum lot requirements, they do not have to have any sort of hearing. The E-1 Estate District does not protect the residents from these types of uses.

Mr. Tudor then discussed the historical zoning background for the South Point Area. He said that the majority of the lots were developed under the 1978 zoning regulations and were zoned either R-1 or R-1A Residential District. This was a strong factor in the staff's recommendation for the R-1 Rural Residential District in 2009 and at the current time. He explained that in 1992, the area was rezoned to either E-1 Estate District or A-1 Agricultural District. The E-1 District density was 1 lot per 2 acres and the R-1 District was 1 lot per 1 acre. He noted that the original development capability was 2 to 7 times denser than today's R-1 District regulations, and 4 to 14 times denser than today's E-1 District regulations. In practicality, the area did not develop to its

maximum density before many of the environmental regulations came into effect. Therefore, it is unlikely that rezoning this area to R-1 Rural Residential District is going to have as much of an impact as has been claimed by some.

Mr. Tudor provided the Planning Commission with information on the septic tiers. Despite what was stated in Kathy Phillips' letter, since Worcester County did not map the tiers, there shall be no major subdivisions allowed at all unless public sewer is provided. That means even a single lot cannot be created if it constitutes the fifth or greater lot out of the parent parcel unless public sewer is provided. This applies to the county as a whole and not just the South Point area. Mr. Diffendal said that in his discussions with the South Point Association, they are concerned that public water and sewer could be extended to South Point. Mr. Tudor explained many of the upgrades that are currently involved with the Mystic Harbour sewer treatment plant to accommodate additional Equivalent Dwelling Units (EDUs), as well as the issues that the county has to contend with (lack of disposal area for spray irrigation, for example). The Treasurer's Office provided some basic financial numbers to staff. He said that in their estimation, the County has spent upwards of \$25 million to provide an additional 666 EDUs. To provide sewer to South Point would cost much more than that. Mr. Tudor reiterated that the biggest issue is always disposal capacity, and not just the establishment of a plant. While anything is possible, it is just not feasible given the amount of money to provide this service. In addition, the residents would have to agree to it. Many people will not want to give up a functioning septic system to pay a sewer bill. Ms. Ott asked for clarification that a plant would have to be built and owned by the county, it isn't just a matter of turning over a small package plant. Mr. Mitchell confirmed that a resident cannot provide a community system and just turn it over to the County in order to get a major subdivision approved. He also stated that this area is in the S-6 category of the Water and Sewer Plan, meaning that there is no planned service. Mr. Tudor reiterated that while it is not impossible to provide sewer, it is highly improbable that it would happen. Mr. Mitchell concurred.

Mr. Tudor identified another difference in the development patterns from when these lots were originally platted. The Critical Area Law is an environmental regulation that sets strict limits for development within its boundaries. Mr. Tudor directed the Planning Commission to review the map that had the Critical Area designation overlay on it. He said that anything within the RCA (Resource Conservation Area) has a density requirement of 1 lot per 20 acres, and that this is regardless of what the zoning density would allow. The LDA (Limited Development Area) is generally found in areas that are already developed, and they have lot coverage requirements, but no density restrictions. Mr. Tudor noted that it was very unlikely that the LDA lands could support any further density.

Mr. Diffendal asked about the Ocean City Golf Course, as redevelopment of those lands has been mentioned. The property is in the RCA, so it is subject to the density requirement of 1 lot per 20 acres. Mr. Mitchell added that most of the land south of MD Route 376 is classified as agricultural or green infrastructure on the Land Use Map of the Comprehensive Plan, which does not allow for development. He noted that this is a huge hurdle that has to be considered before the state would review proposed changes to items such as the Water and Sewer Plan. Mr.

Mitchell stated that while the County Commissioners could approve or make local recommendations, the state may not approve the requested change.

To summarize, Mr. Tudor said that the Planning Commission can see the layers of regulations that are already in place between Critical Area designations and septic tiering. There isn't the probability of something happening that would result in a doubling of the density in the area, no matter what those properties are zoned, even R-4 General Residential District, which has the highest density allowed. Mr. Tudor again reiterated the density that the development was allowed to develop to under the previous zoning regulations, and what they actually platted, which was much less than what they could have done.

So, the question then becomes if the county has to eliminate the E-1 District, but South Point residents do not agree with the R-1 District, then what should the area be zoned? Mr. Tudor then ran through all of the current zoning designations. If the area was zoned RP Resource Protection District, then every single item would have to go to the Board of Zoning Appeals for a special exception – including every addition, pool, fence, etc. To simply change the RP District regulations would affect every single property zoned RP District in the county which is not appropriate. He stressed the need to try to maintain a level of conformity when rezoning properties. Hence the reason that staff recommended the R-1 District. The other residential districts have densities much greater than the R-1 District. If you change the lot requirements of zoning districts, then it can have a dramatic effect on existing properties, which can result in many non-conforming lots, structures, etc., and again it is not recommended. For all of those reasons stated, it has been staff's recommendation to reclassify the South Point area to R-1 Rural Residential District. It will result in greater conformity with the original platting and it will not result in the significant amount of growth that has been alleged.

Mr. Tudor went over several charts that break down the South Point area by acreages of use. First, while there were claims that the county was attempting to double the density on 5,000 acres, this information was not accurate. There is close to 5,000 acres within South Point in total – this includes over 1,000 acres that are wetlands where no development can occur. The chart also provided information on the amount of land that is within each of the Critical Area designations, and acreages by zoning category. A second chart listed all of the major subdivisions that had been platted in South Point and included the total acreage of the original parcel, the number of lots, the applicable zoning code, and the zoning designations currently, and at the time of platting. Only those subdivisions recorded over 50 years ago were developed at a high density, regardless of what the zoning code may have allowed.

Relative to the letter received from Kathy Phillips, Mr. Tudor pointed out what staff views as inaccurate information. First, she claimed that the county needs to prove by law that a mistake was made or that there has been a change in character of the neighborhood. This is completely inaccurate, as these standards only apply to individual rezoning applications. Second, Mr. Tudor noted that the 5,000 acre comment is a little skewed, given that it encompasses things that couldn't be touched anyway, such as wetlands.

Mr. Tudor noted that the second letter included in the Planning Commission packet was from Mr. Hugh Cropper, IV, requesting that the Planning Commission consider including his request to rezone a portion of the former Pine Shore Golf South property where the Maryland Coastal Bays office is located from E-1 District to C-2 General Commercial District. Mrs. Howarth said that the Worcester County Commissioners had issued instructions on November 7, 2017 for the Planning Commission to specifically only consider rezoning the E-1 District lands to R-1 District, and that to include this request would require clarification from the Worcester County Commissioners before the Planning Commission could include it as part of their review. Mr. Diffendal asked how that would proceed, and Mrs. Howarth said that staff would seek clarification on behalf of the Planning Commission. The Planning Commission concurred to have Mrs. Howarth request clarification from the Worcester County Commissioners.

Mr. Mitchell discussed additional issues with providing sewer service to South Point, and the difficulties that they dealt with to obtain approvals for the Mystic Harbour sewer service expansion. He said that the EDUs within the Mystic expansion are planned out through 2035. He noted that to provide service would possibly require connecting to the Town of Berlin and providing spray irrigation at their Newark site. He estimated that it would cost upwards of \$30,000 per EDU to serve South Point, if the rest of the hurdles could be overcome. He claimed that Worcester County has prevented over 900 to 1,000 lots from being platted throughout the County that were proposed on septic as a result of the tier mapping (or lack thereof). As a result, growth is redirected where it is appropriately served by public facilities. Mr. Mitchell stated that we have to recognize that there are limits; this area is environmentally sensitive, with many restrictions, planning and regulatory oversight, as well as state laws restricting development.

Mr. Diffendal asked the audience if they had any questions. Mr. Bounds said that at the previous work session, there were quite a few people who weren't truly informed; he noted that it has been quite the eye opener when the truth has come to light. He said that those individuals should want to be rezoned to R-1 District as he has. Mr. Bounds stated that environmentally this change would not add more homes, and would give residents protections against unfavorable uses.

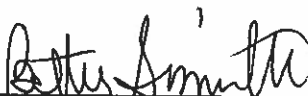
There was a question regarding how the rezoning would impact the assessed value. Staff offered to look into it further, but typically noted that taxes don't change based on zoning, rather it is based on use of the property.

Mr. Wells questioned why the Planning Commission was even considering this sectional rezoning. Mr. Tudor said that regardless of what they proposed for the zoning designation, he may want to consider those uses that have been deemed by some to be noxious (i.e. poultry houses, hog houses, etc.), and that if they do nothing and keep the E-1 District designation, they have to understand that the county cannot deny an application for permit if the use complies. If the Planning Commission instead contemplates changes in zoning district regulations, it gets very complicated very quickly with respect to non-conformities.

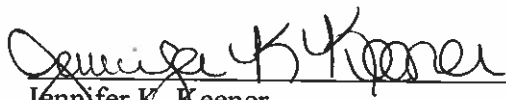
No additional information was requested from the Planning Commission. Staff noted that they would get direction from the Worcester County Commissioners prior to their next regularly

scheduled meeting of April 5, 2018 so that they could proceed with that request, and any potential recommendation.

IX. Adjourn – The Planning Commission adjourned at 1:39 P.M.



Betty Smith, Secretary



Jennifer K. Keener