
MINUTES

The Salisbury-Wicomico Planning and Zoning Commission met in special session on January 29, 2009 in the Council Chambers, Room 301, of the Government Office Building, with the following persons in attendance:

COMMISSION MEMBERS:

Corinne Les Callette, Chairman
Donald B. Bounds, Vice Chairman
Gail Bartkovich
James W. Magill
Glen Robinson
Scott Rogers
Gary Comegys

CITY/COUNTY OFFICIALS:

Ed Baker, County Attorney
Mary Phillips, County Public Works Department
Larry Dodd, Lt., Salisbury Fire Department

PLANNING STAFF:

Jack Lenox, Director
Gloria Smith, Planner
Keith Hall, Planner
Gary Pusey, Planner
Beverly Tull, Recording Secretary



The meeting was called to order at 1:30 p.m. by Mrs. Les Callette, Chairman.

**Minutes:**

Upon a motion by Mr. Bounds, seconded by Mr. Robinson, and duly carried, the Commission **APPROVED** the minutes of the December 10, 2008 meeting with the correction on page 4.



PUBLIC HEARING – TEXT AMENDMENTS – Development Standards within the A-1 Agricultural-Rural Zoning District – Amendments to Chapter 200 Subdivision Regulations and Chapter 225, Zoning: Section 225-27C – A-1 Agricultural-Rural District; 225-51B – Residential Cluster Developments; 225-52 – A-1 Cluster Development; 225-75 – Schedule of Maximum Permitted Residential Densities, all associated Tables and Definitions and other sections as may be identified.

Mrs. Les Callette explained that the Commission would be discussing the comments heard at the public hearing on December 10, 2008 and the comments received in the Planning Office up until January 9, 2009. Mr. Magill and Mr. Comegys were provided with a DVD of the public hearing since they could not attend so that they could participate in this discussion. There would be no public comments taken at this meeting. In order to comply with the Code, a discussion is needed from the Commission with action being taken within 60 days of the public hearing. The desire is to have the Commission make a recommendation today to be forwarded to the County Council for consideration.

Mrs. Les Callette noted that one of her jobs at the Naab Research Center is to organize the vertical file which is the file of newspaper clippings. An article in The Daily Times dated June 10, 1967 is entitled Agriculture: First Industry in Wicomico County, written by Kelvin Adkins. In it he states "*Wicomico was agriculture at its beginning, has always been, and is today*". Mrs. Les Callette stated that she wanted to add hopefully always will be. In today's Daily Times, Tom Horton has a letter to the editor entitled *Need for Unrestricted Growth is a Myth*. In it he states that "*among the greatest, most uncritically accepted and fatally false assumptions we make are the ideas that growth is good, growth is necessary, and growth is inevitable*". Mrs. Les Callette

Les Callette stated that she would like to extend a heartfelt thank you to all who took their time, either personally or by letter, to express their feelings on this issue and to the Coastal Association of Realtors who provided an alternative to the recommendation of the Rural Areas Committee.

Mr. Lenox stated that the Commission had received a lot of information and copies of any letters or correspondence that had been submitted either at the hearing or in the Planning Office. The County Council had forwarded to the Commission legislation prepared by Mr. Baker that would literally put into effect the recommendation of the Rural Area Committee. The Rural Area Committee met for nine (9) months in 2007. In putting together their recommendation, they had several key points and that is what was included in the legislation. There are a few things that need to be discussed. In addition to the legislation forwarded to the Commission, a letter from Mr. Pollitt was read at the public hearing requesting that the Commission look at the public interest as well as the rights of the individual property owners. A summary sheet of densities in Ag Districts in other Counties was provided at each Commissioner's seat. The recommendation from the Rural Areas Committee had a suggestion that density be 1:15 acres with a maximum lot size of two (2) acres and that all lots must be contiguous. This is a statement from half of the Rural Areas Committee that just the number of homes on a parcel does not address the entire issue. There are other things that should be factored into that such as how much open space is protected and how much sprawl occurs. That is why the Rural Areas Committee emphasized a very important change of having the lots be contiguous and having a maximum lot size. If the Commission were to stop there, that change alone would be significant. The other recommendation of the Rural Areas Committee had to do with an alternative of 1:10 acres with a maximum lot size of one (1) acre and the lots must be contiguous. It should be pointed out that when the Committee made that recommendation, they looked at that as a type of compromise that they could recommend with the clause that provided that the 1:3 cluster be eliminated. Mr. Lenox stated that he didn't believe that the Rural Areas Committee would have recommended the 1:10 if the 1:3 cluster remained on the books. The question comes up as to what is a cluster when you get into eliminating the cluster. Words like 'contiguous' are used rather than the word cluster and that was intentional. The idea of clustering in and of itself is good if you look at it as the opposite of sprawl. But in recommending that cluster be eliminated, they did not advocate what you consider to be conventional development. There was some confusion about that in the public discussions. The Committee was very cognizant of the fact that the whole cluster concept as we know it has led to confusion, led to uncertainty, led to court appeals, and they wanted to find some way to make this as simple as possible to implement. There is always a rule of thumb that good development should be easy to do. It is the bad development that should be harder. The three (3) issues at hand are:

- ✓ Affirmation of the minor lot standard

- ✓ What is contiguous and adjacent? The definitions should be tweaked.
- ✓ The effective date for the changes being made? Today's date (January 29, 2009 could be used).

With the enactment of the set aside provisions in 1998, it became possible to dedicate the 50 percent open space in some subdivisions but only come in with a phase of the development first. There have been some suggestions to work on language to grandfather those subdivisions where the 50 percent set aside has already been dedicated.

There have been suggestions through the public that the idea of a cluster should be kept but that the density should be discussed. It is important that if you chose to keep the cluster that there would have to be a whole new discussion to define the phrases in the Code that are struggled with constantly.

The discussion that was advertised included the sections of the Code referenced by the Rural Area Committee so as to meet the technical procedures of the Zoning Code and its Amendments. The comments involve issues beyond zoning. There have been statements regarding rural road standards which fall under the Subdivision Code. There are questions about Agricultural Preservation. The TDR program needs more work. The purchase of development rights (PDR's) need to be worked out as well as the investigation of the Installment Purchase Program (IPA).

Mrs. Bartkovich stated that she didn't believe that Wicomico County could have a workable TDR program. There isn't any money to purchase the development rights. The receiving areas can be in the Ag or the growth areas and the growth areas would be municipal growth areas which would require an intergovernmental agreement. If the cluster is eliminated, it will hurt the farmers when they need money to keep farming. There does need to be a grandfathering position in this. If somebody has submitted a proposal and gotten the 50 percent set aside then it would seem that they were in the process already. Mr. Lenox stated that there are deadlines in plan submissions. If people had followed up within a few years, then it wouldn't be an issue but in at least two (2) cases, there are two (2) large subdivisions that have only done a single phase and not done the next phase. This will require these subdivisions to start back at the sketch phase but under which Code.

Mrs. Bartkovich stated that if the cluster was kept that a lot of work needed to be done because the wording is too ambiguous. There are some concerns about rural roads. If it is a small enough development, why can't it be a private road? The time frame is a concern because a new Comp Plan is being prepared which does speak about cluster subdivision. If we are going to eliminate some of this, then we need to move on this sooner than later because the Comp Plan must be to the State by October 1, 2009. Mrs. Bartkovich questioned if the Commission was doing this

backwards. Currently, we are required by State Law to have the Comp Plan done by October 1, 2009 and this is a zoning change. Once the new Comp Plan is approved, the entire zoning issue will have to be updated to reflect what is in the new Comp Plan.

Mrs. Les Callette stated that the reason that this has been moved forward is the fact that since 1998 the Commission has had 22 subdivisions in the Ag land and 19 of them have been clusters. It has become more burdensome to hear these knowing that if the Code had been written properly that there wouldn't be these problems. Legally, there isn't anything for the Commission to fall back on. If these amendments are deferred until the Comp Plan is complete, then there could be a lot more clusters come in to eat up more land.

Mrs. Bartkovich stated that she was for keeping the cluster to help preserve the land and help the farmer's land values.

Mr. Comegys stated that he shared the frustration of the cluster ordinance with the way that it is written now. He stated that he would rather use the contiguous and adjacent lots which better defines what a cluster is. The three (3) inherent lots need to be restated. The density is affected by the inherent lots as well as the cluster. The definition of zoning is to control property. Since land is a finite resource, there is concern about what is being done today, in the Comp Plan and what is left for the next generation. If we continue on this course, there won't be enough farmland in the County to remain the top County in the State for farmland. Mr. Comegys stated that the Commission's responsibility is to do what is right for now and down the road. He added that he supported the amendments that had been made with additional work that needs to be done.

Mr. Magill stated that TDR's are demand driven and were developed with the intent to give property owners reimbursement for the property that could not be developed. He stated that he had a problem with TDR's being sent to another rural Ag district. The effective date should be January 29, 2009. The grandfathering clause should include anything that is in the process. The road standards could be relaxed in the rural areas. The three (3) inherent lots should be addressed as to how the residual will be treated and whether they are included or excluded from the density calculation. He added that the future impacts need to be included and considered for the big picture.

Mr. Rogers stated that he had never been convinced during his time on the Commission that the current cluster provision was written to do what it is intended to do which is to limit the sprawl in the rural areas and it does the opposite. The time to check this is now. We do need to look at the big picture of what we're doing in the County.

Mr. Robinson stated that what land is here is the only land that is here. There won't be more farmland being made. It needs to be addressed to satisfy everyone. We don't live in a dictatorship. If we keep taking the farmland away, then there won't be any more farmland left. We need to do something now to try and preserve farmland to the best of our ability.

Mr. Bounds stated that on behalf of the Commission that he wanted to thank everyone that came out to all the hearings. He explained that he and Mrs. Les Callette had been around since 1998 when this cluster was instituted and it was a big mess then. Since the cluster came out there have been 22 subdivisions in the A-1 District and 19 of them have been clusters. It appears that the cluster has become inherent and the 1:15 has become the bonus. It appears that Wicomico County is one (1) of the most lenient counties for density. There are three (3) recommendations from the Rural Areas Committee after they met for almost a year. He stated that he felt that the Commission should honor the guidelines suggested from the Rural Areas Committee. The County Council should also be asked to pursue an effective TDR/PDR program. The three (3) inherent right lots should remain. The projects in the pipeline as well as the projects that have dedicated the 50 percent open space should be grandfathered. The definitions of contiguous and adjacent should be clarified in the Zoning Code. The effective date for everything should be January 29, 2009. Mr. Bounds stated that this was his motion.

Mrs. Les Callette stated that the cluster had been a burden on the Commission since 1998. There is no way to say no to a developer in the current Code because by law it is allowed. Every farmer or land owner in the A-1 District has the option of the three (3) inherent lots plus the ability to develop the balance of the land at the 1:15 density. Mrs. Les Callette stated that she recommended that the Commission keep the three (3) inherent lots in the Code as it is. Unfortunately, there have been cluster subdivisions that have come in to the Commission where the developer has the right to get the three (3) inherent lots as well as the cluster. That makes for much more density than what cluster was ever designed for. She stated that she was in favor of the rural roads because it would decrease the impervious surface out in the rural areas. Mrs. Les Callette stated that a good definition of contiguous was needed. The County should be more proactive if the money is available for Ag Preservation. Mrs. Les Callette stated that she supported continuing to look at TDR's/PDR's and should be a part of the recommendation to the County Council.

Mr. Magill stated that in the long run the mandate should be that the Comprehensive Plan and the Zoning Code are consistent.

Mrs. Les Callette stated that there was wonderful input from Ag land owners and farmers but we need to look to the future and the young farmers who spoke out so eloquently the night of the public hearing. These young farmers are the ones out there doing the farming today. They have asked the Commission to eliminate

the cluster and go with the 1:15 or the 1:10 if we can get approval for a one (1) acre lot. We need to look for their future as well as the future of Wicomico County and move forward with the recommendation from the Rural Areas Committee.

Upon a motion by Mr. Bounds, seconded by Mr. Magill, and duly carried, the Commission forwarded a **FAVORABLE** recommendation to the Wicomico County Council to follow the amendment per the Rural Areas Committee:

1. To eliminate the 1:3 cluster provision.
2. To allow 1 dwelling unit per 15 acres with a maximum lot size of two (2) acres, with all lots being contiguous.
3. To allow 1 dwelling unit per 10 acres subject to a maximum lot size of one (1) acre, with all lots being contiguous.
4. To establish the effective date of these changes as January 29, 2009, and to further protect plats where the full 50% set-aside area had been previously dedicated.
5. To continue to pursue an effective TDR/PDR program.
6. To continue the provision for three (3) inherent "minor" lots.
7. To further clarify the definition of the terms "contiguous", "adjacent", and "cluster", and their associated application.
8. To further research "rural roads" and consider the implementation of alternative standards.

Mrs. Bartkovich stated that this has to move forward to the County Council because they make the final decision on this. There will be public hearings by the County Council and then they can actually make changes on this. Mrs. Bartkovich stated that she still had concerns about taking out the word cluster and replacing it with contiguous, until the definitions are reviewed. No matter what is done in the Ag District, things need to be grouped together. Mrs. Bartkovich stated that she would use that term, whether it be clustered, whether it be contiguous, the lots need to be together and there needed to be a good set aside.

Mrs. Les Callette asked if Mrs. Bartkovich would like to make that an amendment to Mr. Bounds' motion to have the word cluster with contiguous.

Mr. Bounds said that would be fine.

Mrs. Bartkovich said that she would like to include cluster with contiguous, and that would give them the option to even look at the proposal from the Realtors Group. She stated that she would like to leave that option open.

Mr. Bounds stated "well the County Council can decide that".

Mrs. Les Callette asked Mr. Bounds if he accepted the clustering along with contiguous. Mr. Magill said he agreed.



There being no further business, the Commission meeting was adjourned at 2:24 p.m. by Mrs. Les Callette.



This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning, and Community Development Office.

Corinne Les Callette, Chairman

John F. Lenox, Director

Beverly Tull, Recording Secretary