

OFFICIAL MINUTES
Carroll County Planning and Zoning Commission

Special Meeting

February 23, 2009

Location: Carroll County Office Building

Members Present: David L. Brauning, Chairman
Dennis Wertz, Vice Chair
Wayne Schuster
Charles M. Chadwick
Melvin E. Baile, Jr.
Alec Yeo

Members Absent: Robert B. Slade, Alternate

The meeting opened at 10:30 a.m. Present with the Commission were the following persons: Julia W. Gouge, Dean L. Minnich, and Michael D. Zimmer, Board of Carroll County Commissioners; Delegate Nancy Stocksdale; Delegate Tanya Shewell; Delegate Susan Krebs; Senator Larry Haines; Steven Powell, Chief of Staff; Steve Horn, Tom Devilbiss, Ralph Robertson, and Kelly Martin, Department of Planning; Kim Millender and Terri Jones, Department of the County Attorney; Brenda Dinne, Bureau of Comprehensive Planning; Gale Engles, Bureau of Resource Management; Jim Slater, Office of Environmental Compliance; Clay Black, Bureau of Development Review; Ted Zaleski, Department of Management and Budget; Dave Humbert, Special Assistant to Commissioner Minnich; Charles and Denise Duvall; and members of the press.

WATER QUALITY ISSUES, POLICIES, REGULATIONS, AND PROPOSED LEGISLATION IMPACTING CARROLL COUNTY

Mr. Steve Horn, Director, Department of Planning, thanked the members of the Delegation and the Board of County Commissioners for joining the Planning Commission in the special meeting. He noted that following a briefing by staff to the Planning Commission on January 20 with regard to evolving stormwater management regulations, Commissioner Gouge suggested the Commission convene this meeting. Mr. Horn indicated that staff would discuss environmental regulations the County operates under, pending regulations, and proposed legislation. He turned the meeting over to Mr. Tom Devilbiss, Deputy Director, Department of Planning.

Mr. Devilbiss introduced his staff, including: Gale Engles, Chief, Bureau of Resource Management; Brenda Dinne, Chief, Bureau of Comprehensive Planning; and Jim Slater, Environmental Compliance Officer. He indicated that the goal of the presentation was to provide an understanding of the multitude of regulations that the County is implementing on a local level on a daily basis. Mr. Devilbiss displayed a map detailing the municipal borders and priority funding area boundaries. He noted that Carroll stands out at the State level with regard to its cooperation with the municipalities. Mr. Devilbiss noted daily functions at the local level include: floodplain management, stormwater management, erosion and sediment control, grading, forest conservation, etc. The County provides inspection and enforcement for all of the municipalities and plan review for several. Mr. Devilbiss reviewed the Stormwater Management

Act of 2007 which looked at enhancements to the stormwater management regulations at the State level. He noted that this will not have a tremendous impact on Carroll County because the Commissioners adopted many of the things the Act proposed in 2004. Mr. Devilbiss reviewed the Chesapeake Bay Tributary Strategies explaining that they were developed and presented as being voluntary but along with the strategies came lofty goals mentioned in State permits and caps for wastewater treatment plants. Mr. Devilbiss spoke briefly about the 2010 Bay Total Maximum Daily Load (TMDL) which will present significant staff and financial challenges to the County. He explained that a TMDL is the amount of substance (nutrients, bacteria, metals, etc.) that a water body is said to be able to handle before it exceeds a certain level. There are 20-25 proposed or current TMDLs in Carroll County. By 2010, 85 percent or more of the County will have at least one TMDL in effect. Mr. Devilbiss stressed that the problem is the County has no idea what the ramifications are if the TMDLs cannot be met.

Mr. Steve Powell, Chief of Staff, questioned whether proportionate shares are assigned to counties for TMDLs since we are at the headwaters of several watersheds and our waters flow through other jurisdictions.

Mr. Devilbiss noted that Carroll had asked MDE to break out our share of containment when they looked at Prettyboy Watershed and in some cases they do separate it.

Commissioner Gouge asked Mr. Devilbiss to list some of the things found in Double Pipe Creek.

Mr. Devilbiss indicated that MDE had broken them out into categories: domestic animals, cattle, wildlife, etc. He explained that TMDLs are impaired zones while Tier II waters are considered to be of very high quality. Special considerations are given to those waters with regard to discharge. MDE looks at the entire watershed that drains to Tier II waters.

Mr. Horn noted that five of the County's growth areas are impacted by Tier II watersheds. MDE has not given the County an answer about what would be consistent with Smart Growth principles if we want to continue to grow, especially industrial lands. He indicated the Clean Water Act is at the base of all the regulations. There are accumulated affects to having TMDLs and watershed protection areas for Tier II waters.

Mr. Slater spoke about the NPDES program, MS-4 permits, general construction permits, Notices of Intent, etc.

Staff discussed the pending changes to the general construction permits. Mr. Baile suggested 4-6 months will be added to the process if a developer comes in with an area of disturbance of over one acre.

Mr. Devilbiss explained that the new general permit will also have stipulations that require additional oversight at the County and State levels.

Commissioner Minnich indicated that this has an impact on anyone who wants to build a house, expand a business, municipal governments, economic development, etc. The State is creating standards that we know right now we may not be able to meet.

Senator Haines noted that the current administration campaigned on the fact that they are taking away control of land use from the counties. The counties will have the burden of the cost with

the unfunded mandates. He indicated the State will be putting more requirements on the counties and the local governments are going to be carrying a tremendous burden.

Mr. Devilbiss stated that very clear expectations and realities need to be put into place. He suggested that it may not be physically or fiscally possible for the County to comply with the regulations.

Mr. Schuster questioned how other counties and states are dealing with these regulations. He asked whether any amendments to the Clean Water Act are pending.

Mr. Slater indicated he was not aware of any amendments to the Clean Water Act—nothing that would help the County deal with these issues.

Mr. Schuster questioned whether there have been any conversations at the MACo level.

Delegate Shewell indicated she was a member of the Environmental Matters Committee. She noted there was a hearing last week for six new bills, one entitled: “One Maryland, Smart, Green and Growing.” Delegate Shewell indicated her committee received information from the State Planning Office that the local counties have not seen. She noted that MACo and MML were present. Delegate Shewell thanked the County for holding today’s meeting.

Commissioner Zimmer suggested that MACo has been very proactive in providing a forum for discussion.

Commissioner Minnich indicated there needs to be a way to allow reasonable growth and infill development without allowing a wholesale destruction of environmental features.

Mr. Schuster questioned whether there was any way to not adopt new laws, etc., during these economic times.

Delegate Krebs noted that this is just clean water; there are also laws and regulations regarding clean air. She acknowledged that everyone wants clean air and clean water, but at some point there is no measurable return on your investment.

Commissioner Gouge asked staff to talk about the costs of retrofitting stormwater management ponds.

Mr. Devilbiss explained that the County recently spent \$130,000 on one stormwater management pond which covered 47 acres of management. Staff tries to work the cost down to \$4,000-\$5,000 per acre of treated land. The County’s impervious surface is spread out, so the ability to meet the State’s goals with regard to impervious surfaces is different for each jurisdiction. Mr. Devilbiss indicated the County spent \$3.6 million in the Patapsco area for some preservation easements and stormwater management in the 500-acre watershed.

Delegate Shewell questioned the implications of the 2007 Stormwater Management Bill which was portrayed as a wonderful, feel good law to the legislature.

Mr. Devilbiss explained that the pending regulations are being challenged by a group that does not feel they are stringent enough. He explained that the County requires you to try infiltration

to put the water back into the ground—that requirement was not included in the State regulations when the County made it part of the Code. He explained that the County doesn't really have ponds in subdivisions anymore; stormwater facilities are underground. The idea is to try to reduce the size of facilities and the number of drains.

Commissioner Gouge explained that the County is trying to reduce the number of stormwater management ponds. Currently, there are 122 ponds that the County must maintain. Requirements for construction of ponds were changed to make the slopes less steep to allow mowing, etc.

Mr. Schuster questioned whether the intent of Smart Growth is to make it so ridiculously expensive to develop that we will have to approve higher densities.

Mr. Horn noted that the accumulation of regulations impacts the County's local land use decision making authority and what property owners can do on their property.

Mr. Devilbiss spoke briefly about the Water Resources Element (HB 1141) which is a State requirement that all comprehensive plans include a water resources element by October 2009. The County has spent \$250,000 on this unfunded mandate.

Staff reviewed additional legislation that is pending in Annapolis and the uncertainty of the impacts on the County.

Delegate Stocksdales asked how the other jurisdictions in the State feel about this and are dealing with it.

Mr. Horn indicated that the MACo Planning Directors meet monthly. Everyone is frustrated with having to implement new regulations while considering the impacts of proposed legislation that requires more resources to implement. The group has been unanimous in working with MACo to oppose bills.

Commissioner Minnich stated that he would not think about voting on any proposal under these categories without talking with Tom Devilbiss or other staff first about their consequences.

Delegate Shewell suggested there cannot be one set of rules because how a bill impacts a western Maryland county versus a high density county makes a real difference. She expressed concern that MACo is not as effective as the County believes it to be. Delegate Shewell indicated she has never heard the concerns that she is hearing today. She noted that the Environmental Matters Committee has made visits to several counties during the summer months.

Commissioner Gouge indicated that the Committee has never visited Carroll, and we are one of the more advanced counties with regard to environmental regulations.

Delegate Shewell indicated that the Committee must receive an invitation from the County.

Delegate Krebs offered assistance to the County in getting responses from MDE on questions with regard to impacts of existing regulations and proposed bills. She suggested the Delegation can help push for responses to these questions as long as the members are kept in the loop and made aware.

Mr. Horn thanked everyone for taking the time from their busy schedules to meet this morning. He suggested that we need to be thinking about how proposed legislation affects local government, individual citizens, and economic development prospects.

Commissioner Gouge noted that many of the laws passed by the General Assembly come to the County but do not have regulations with them, so the counties are unsure how to implement the new laws. She stated that each of the jurisdictions is different, so one size does not fit all and that is not really given consideration.

Delegate Shewell indicated that each bill comes with a fiscal analysis, and she will not vote for bills that say “unfunded mandate”.

There being no further business, the meeting adjourned at 12:00 noon.

Secretary

Approved