

The Commissioners of St. Michaels

Public Working Session

January 14, 2010

3:30 p.m. – Public Working Session

Present:

Commissioners Michael Brady, Joanne Clark, Robert Snyder, Donna Hunt and Phillip Dinkel, Town Manager Cheril Thomas, Town Attorney Jefferson Blomquist, Administrative Clerk Sabrenia Yohn, Zoning Officer Deborah Renshaw, and approximately 37 members of the public.

Call to Order:

President Brady called to order the public working session of the Commissioners of St. Michaels at 5:05 p.m. in the meeting room of the St. Michaels Free Library, 106 S. Fremont Street, St. Michaels, Maryland. The Pledge of Allegiance was recited.

President Brady said this meeting is the continuation of the Public Hearing¹ in the matter of a request for TND Overlay Zone Designation for Miles Point III-150 238 Lot/247 Unit TND Overlay Zone Application (“Application”) filed by TND Development, Inc. and Miles Point Property, LLC (“Applicant”). The land that is the subject of the Application is identified on Talbot County Tax Map 23 as Parcel 111, and is generally bordered by Perry Cabin Drive, Yacht Club Road, MD Route 33, and the Miles River, and encompasses approximately 72 acres.

President Brady called upon Mrs. Yohn who entered the exhibits #1 through #69 from the exhibit list, along with new exhibit #70 into the record. Attached to these minutes is a copy of the complete Exhibit List through exhibit #70.

President Brady reminded all interveners, staff and witnesses that they were still under oath and then called upon Richard A. DeTar, attorney for the applicant, to continue with the applicant's presentation.

Mr. DeTar introduced T.J. Pecorak. Mr. Pecorak identified himself as a representative for the builder and owners of the Miles Point project and gave an overview of his qualifications and background. Mr. Pecorak began with a discussion of Exhibit #58B (Letter from the Fogg Cove Homeowners Association, Inc. dated January 6, 2010 - Subject: Application for Miles Point III-150 TND Project as submitted to the Town of St. Michaels by Miles Point Property LLC and TND Development Inc.; Request for TND Overlay Zone Designation for Miles Point III-150 238 Lot/247 Unit TND Overlay Zone Application) with respect to the concerns of the Fogg Cove Homeowners' Association. Mr. Pecorak then discussed Section 290-23A of the Town's Code regarding a new requirement for 10 percent open space for R-1 Zones, and also provided an explanation of Environmental Site Design (ESD) devices (*e.g.*, cisterns, rain gardens, porous pavers, and vegetated roofs) and practices. Mr. Pecorak concluded his presentation and invited questions. Thomas Alspach, attorney representing a group of Interveners, questioned Mr. Pecorak about stormwater management and ESD devices, referring to Exhibit #9D. John Wolfe of Perry Cabin Drive asked about accesses to Yacht Club Road. Mr.

¹ The public hearing was recorded by Corbin & Hook Reporting, Inc., 134 Holiday Court, Suite 310, Annapolis, MD 21401, 410-268-6006 and upon payment of the transcribing costs, a copy of the transcript of the hearing may be obtained.

Pecorak said the next witness, Michael Watkins, could best answer questions about planned accesses, but that he had spoken to the State Highway Administration regarding required and allowable entrances and exits. Mr. Pecorak added that the development was also committed to controlling the speed of traffic in and out of the development. President Brady asked if the Commissioners had any questions for Mr. Pecorak. Commissioner Snyder asked if the TND was not approved, how many lots would be allowed under its current zoning. Mr. Pecorak said approximately 300 lots with no open space requirements. Commissioner Hunt asked Mr. Pecorak how many Traditional Neighborhood Developments he had been involved in, to which he responded three. Mr. Pecorak added that the three developments did not have ESD systems, but did have systems similar to a bio-retention pond.

Mr. DeTar then called his next witness, Michael Watkins, Applicants' planner/architect, and President Brady administered the oath to Mr. Watkins. Mr. Watkins presented his qualifications for the proceeding noting that he had been involved with the Miles Point project from its inception. President Brady asked the Commissioners and the Interveners if there was any objection to accepting Mr. Watkins as an expert witness in TND Planning and Design. There were no objections.

Mr. Watkins then provided a history of the design of the project and in response to a question from Mr. DeTar, he explained the differences between a Traditional Neighborhood Development (TND) and an R-1 development. Mr. Watkins said TNDs are communities designed to be pedestrian friendly, with open space where the community can gather. The Commissioners and interveners had a number of questions for Mr. Watkins about the TND design. John Wolfe of Perry Cabin Drive asked about connectivity of the development to the Town. Attorney Alspach asked about density and the number of units in the TND development, and referenced his Exhibit #60B. As there were no additional questions for Mr. Watkins, President Brady thanked him for his presentation.

President Brady announced that it was time for the Interveners presentations and recognized John Wolfe, who was stepping in for Bruce Bedford on behalf of the Fogg Cove Homeowners' Association. Mr. Wolfe submitted a list of suggestions for improving the development plan, including an additional entrance onto Yacht Club Road, a lower speed limit, sidewalk connectivity, adequate buffers and stormwater management.

President Brady reconvened the meeting following a ten-minute break, and recognized Phillip Jones of St. Michaels Road. Mr. Jones read and submitted a document he had prepared entitled "Statement for the Miles Point TND Public Hearing" which was entered into the record as Exhibit #71. Mr. DeTar said that the Applicant would need time to respond to Mr. Jones' submission as it was just presented this evening. President Brady noted that there would be time designated beyond tonight's hearing for all participants to respond to Exhibit #71 and any other exhibits.

As there were no additional questions for Mr. Jones, President Brady recognized Attorney Thomas Alspach, who along with Attorney Thomas Deming represent several Interveners. Mr. Alspach presented a "marked-up" version of Exhibit #9D (Existing Drainage Area map for Miles Point III-150, prepared by McCrone, Inc. and dated December, 2007) which he asked be entered into the record. President Brady asked if there were any objections from the Applicant, the Commissioners or other Interveners to this document being entered as an exhibit. There being none, the revised version of Exhibit #9D was entered into the record as Exhibit #72.

Mr. Alspach then called Mr. Pecorak as a witness and asked him questions about the TND and Miles Point entities, the cost of housing in the development and the impact of the development on St. Michaels in the current economic market.

In response to a previous question to Michael Watkins by Commissioner Clark, Mr. Watkins provided the dimensions of the roads in the Ion Development in Virginia.

Robert Bathurst, a civil engineer, was called as a witness and was questioned by Attorney Thomas Deming as to his qualifications and experience as a Site Development Engineer for the Maryland Department of the Environment (MDE). Mr. Bathurst's curriculum vitae was entered into the record as Exhibit #73, after which the Mr. Deming, Mr. DeTar and the Commissioners had a number of questions. The Commissioners then agreed to certify Mr. Bathurst as an expert witness for Mr. Deming's presentation. Mr. Deming continued with his questions of Mr. Bathurst, including stormwater management questions related to the proposed draft of Chapter 5 of the MDE manual. Mr. Bathurst was cross-examined by Mr. DeTar during which time it was determined that Mr. Bathurst had been retained two weeks ago by the Alspach/Deming Interveners to review the Applicant's plan, had performed no site visits to the property, had not read the Town's TND Ordinance, had spent approximately 20 hours reviewing the exhibits but was unable to specifically identify the exhibits he had reviewed and has never prepared a TND zoning application with stormwater management. Town Attorney Blomquist asked Mr. Bathurst if the 238 lot proposed plan was feasible with stormwater management to comply with the proposed MDE regulations to which Mr. Bathurst responded that he was not willing to answer unless he actually did the design.

Mr. DeTar, at this time, indicated that the Applicant will stipulate that they have not entered a concept plan for the development for stormwater management.

President Brady then asked Mr. Alspach and the Interveners if there were any additional presentations or witnesses. There being none, President Brady said the Commissioners would take a dinner break 30 minute dinner break beginning at 6:55 p.m. until 7:30 p.m., after which they would take public comment.

President Brady reconvened the hearing at 7:30 p.m.

Comments from the Public:

Ted Doyle of Perry Cabin Drive spoke in favor of the project, referring to his memo dated January 13, 2010 which had been entered into the record as Exhibit #67.

Ann Hymes of Grace Street said she appreciated the proceedings and hoped the Town would move forward with the project.

Roy Myers of E. Chestnut Street said he was in favor of a Miles Point type project but had concerns about the number of homes proposed. Mr. Myers' written comments were entered into the record previously as Exhibit #61.

Ray Maule of Chew Avenue expressed concerns about how the development might affect the quality of the water in the Miles River and ultimately the Bay.

Rebuttal Arguments:

Mr. DeTar called upon Steve Layden of McCrone, Inc. and asked questions regarding under drains and cisterns and through additional questioning established that Mr. Layden had logged

more than 1700 hours of time on the Miles Point Project since December 2004. In response to questions from Mr. Alspach, Mr. Layden responded that in his opinion the proposed ponds are necessary for stormwater management and prefers burying cisterns to prevent freezing. There were no additional comments or questions from other Interveners. There were no additional comments from the Commissioners.

Summations

Phillip Jones of St. Michaels Road had no additional comments as an individual Intervener.

Thomas Alspach presented the Commissioners with a binder which contained excerpts of exhibits previously entered into the record making reference to comments on open spaces, cluster developments, portions of the MDE design manual, and Judge Souse's decision in Civil Case 5654.

Attorney DeTar questioned Mr. Alspach's binder of excerpted exhibits and cited a number of conclusions based on information taken out of context. Mr. DeTar emphasized that Exhibit #1 addresses the criteria necessary for the Commissioners to grant the Applicant's TND zoning application and sets forth how the application meets or exceeds all of the TND requirements. Mr. DeTar also referenced Exhibit #39, in which Lane Engineering describes how the application meets all engineering requirements Exhibit #45 which is a favorable recommendation from the Planning Commission. Mr. DeTar also noted that none of the Interveners have been able to present any evidence to dispute that the application meets the TND requirements.

Comments from the Commissioners

Commissioner Dinkel said he was satisfied that Exhibit #1 and other key exhibits provided enough detail and information for the Findings of Fact to be written. On consent of the other Commissioners, President Brady closed the public hearing, and stated that the record would remain open until January 22, 2010 for Interveners and the Applicant to respond to exhibits entered from January 6, 2010 forward. Mrs. Thomas added that comments would be due on January 22, 2010 by 4:30 p.m. at the Town Office. President Brady thanked everyone for their participation.

Announcement of Future Meetings

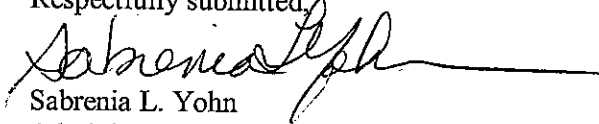
President Brady announced the following future Commissioners' meetings:

- January 26, 2010 – 4:00 p.m. – Town Office – Deliberations and Direct Findings on Miles Point III-150 TND Overlay Zone Application
- January 27, 2010 – 6:30 p.m. – Town Office – Regular Legislative Session
- February 10, 2010 – 4:00 p.m. – Town Office – Special Legislative Session – Final Deliberations and Decision on Miles Point III-150 TND Overlay Zone Application
- February 10, 2010 – 5:00 p.m. – Town Office – Regular Public Session

Adjournment

As there were no other comments, President Brady adjourned the meeting at 9:20 p.m.

Respectfully submitted,


Sabrenia L. Yohn
Administrative Clerk

Attachments:

- Exhibit List for Miles Point III-150 Sketch Plan for TND Zone Overlay