

MINUTES

The Kent County Planning Commission met in regular session on Thursday, May 5, 2016, in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland, with the following members in attendance: Elizabeth Morris, Chairman; William Sutton, Vice Chairman; Ed Birkmire; James Saunders; Kim Kohl; William Crowding; and Joe Hickman. Staff in attendance were: Amy Moredock, Director of Planning, Housing, and Zoning; Stephanie Jones, Environmental Planner; Katrina Tucker, Community Planner; G. Mitchell Mowell, Planning Commission Attorney; and Tonya Thomas, Secretary.

Ms. Morris called the meeting to order at 1:30pm.

MINUTES

The minutes of April 7, 2016, meeting, were approved as presented.

APPLICATIONS FOR REVIEW:

David A. Bramble, Inc., requests renewal of the special exception to continue operation of the existing sand and gravel pit on a 150.63-acre property owned by Marie L. Orem located 8415 Rock Hall Road (MD Route 20) near Fairlee. This operation has been known as the Dudley Orem Pit. The excavation site comprises 19.66 acres located interior to the property, which is also otherwise farmed, and only 25 percent of the allowed area of the operation is used at one time. Access to the sand and gravel pit is by an unimproved lane from MD Route 20 that also serves a residential lot and agricultural structures on the farm. The applicant's narrative advised that there are no employees permanently located at this site. The materials excavated from this sand and gravel pit support the operation of David A. Bramble, Inc.

The parcel is zoned "AZD", Agricultural Zoning District, and is generally surrounded by farmland and woodland. Adjacent to the pit is a 1.35-acre lot that was subdivided from the farm in 2007 on which there is a single-family dwelling. There are also residential dwellings on the farm.

Present and duly sworn in were the applicant, Jay Silcox, Professional Engineer, David A. Bramble Inc.; and Counsel and applicant Megan Owings-Bramble, Esq.; and Ms. Tucker, Community Planner.

Ms. Tucker gave an overview of the application, lists of dates for prior Special Exceptions granted for the gravel pit, and cited all of the applicable laws of the *Kent County Land Use Ordinance* to include Article VII, Section 2 that establishes the standards applicable to all special exceptions; Article VII Section 7.52 of the *Ordinance* that grants the Board of Appeals the authority to grant a special exception for gravel pits; and Article VI, Section 5 of the *Ordinance* which outlines the procedures and requirements for site plan review;

Ms. Owings-Bramble offered information on the Citizen Participation Plan that involved sending a letter to all adjacent property owners. The letters were mailed on April 21st. Ms. Owings-Bramble also submitted a copy of the land owners' authorization.

Mr. Birkmire asked how much longer David A. Bramble, Inc. plans to operate the gravel pit. Ms. Owings-Bramble stated they have not used anywhere near the 25% of the 19.66 acre area.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to forward a favorable recommendation to the Board of Appeals for renewal of the sand and gravel pit special

exception based on the following findings, which included adding the Board of Appeals conditions of the 2011 renewal:

- The sand and gravel pit has been in operation at this site for more than 30 years without complaint from surrounding property owners and residents.
- The special exception has been consistently renewed.
- The 19.66-acre excavation site is located interior to the property and the 150.63-acre farm is more than adequate for the existing use.
- Trucks enter and depart the site by an existing unimproved stone lane from MD Route 20. Renewal of the special exception will not result in increased traffic as the number of trucks will not increase since the area of the pit is not expanding. The State Highway Administration has advised that the entrance is currently suitable for continued access, but the applicant must ensure that the current paved entrance apron is maintained to protect the shoulder along MD 20.
- The nature of the area is farmland and woodland.
- The closest places of public gathering are Potter's House Ministries, Inc., and Salem Methodist Church, both in the Village of Fairlee, less than one-mile distance to the north. St. Paul's Church is located less than two miles to the south on Sandy Bottom Road.
- During the course of prior renewals the record has been devoid of any evidence that the use would have a negative impact on community facilities and services.
- There are no cultural and historic landmarks or significant natural features in the vicinity that would be adversely impacted by the use. Forested areas or woodlands on the farm will not be disturbed by this operation.
- As stated in their narrative, the applicant has appropriate measures in place to control deleterious effects from noise, vibration, smoke and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties.
- There are no known threatened or endangered species, areas of specific value, or rare assemblages of species or other vital habitat located within the limits of the pit. There are no direct impacts to environmentally sensitive areas on the farm, such as the West Fork of Langford Creek, which are outside the limits of pit and will not be disturbed.
- The operation has been in existence since 1984 and renewed on five year cycles. There is no reason to believe that the surrounding properties will be negatively impacted by the continuation of the operation. Additionally, the 2011 renewal noted that the in light of the site's topography and existing forested area that screening was not required.
- With the prior renewals the record has been devoid of any evidence that the use would impact property values, water quality, fish, wildlife, or plant habitat.
- The proposal is consistent with the Comprehensive Plan, the general intent and the use, design, and environmental standards found in the *Land Use Ordinance*.
- Materials will not be brought from off site for mixing or processing, or similar use; though dredge spoils are used for reclamation.
- The surface mine permit was last renewed in December of 2014 (Renewal of Surface Mine Permit No. 84-SP-0173-B) and is valid until September 30, 2019.
- The sediment control plan last signed on 30 September 2014 is valid for two years, so it will expire in approximately five months.
- The operation shall not be enlarged beyond 19.66 acres.
- The Special Exception shall be granted for a period of five (5) years.

- The operation must have an approved operating and restoration plan from the Surface Mining Division of the Maryland Department of the Environment's Water Resources Administration (the "SMD") in place at all times.
- The Applicant's mining permit, sediment and erosion control plan, and operating and restoration plan must be strictly followed at all times.

Mr. Sutton seconded the motion, and it was approved unanimously.

After much discussion and consideration of all applicable laws, Mr. Hickman made a motion to grant conditional combined approval of the preliminary and final site plan based on the following:

- The Kent County Health Department has approved this application.
- The Citizen Participation Plan report was submitted on 21 April 2016.
- The plans need to be sealed and signed by a registered surveyor or engineer.
- A note should be added to the site plan that there is no exterior lighting or signs.
- A note should also be added to the site plan indicating the acreage of the parcel, and the area of the pit.
- There is a permitted dredge spoil stockpile site within the limits of disturbance that needs to be reflected on the plans.
- Dredge spoils as stock piles should be noted.
- The sediment control plan last signed on 30 September 2014 is valid for two years, so it will expire in approximately five months. The applicant should coordinate with the Soil Conservation District concerning its renewal and necessary details for reclamation that may need to be reflected on the site plan.
- Provided that the Board of Appeals grants another five-year renewal of the special exception.

Mr. Crowding seconded the motion, and it was approved unanimously.

Staff Reports

Amy Moredock:

- The Renewable Energy Task Force concluded its review of renewable energy provisions at their April 29th meeting. Staff will be drafting text amendments relative to the utility scale solar provisions in the Agricultural Zoning District and small scale wind energy provisions which contemplate community wind energy system use. The Agricultural Advisory Board, as well as the Planning Commission, will review the amendments prior to County Commissioner decision.
- Staff continues to work with the Healthy Waters Roundtable relative to the Local Watershed Implementation Plan regional implementation. Kent County was a joint signatory on a letter to both the Maryland Department of Environment and Department of Planning requesting local training sessions. We were looking for support from MACo.
- She received correspondence from Jack Riley who represents the Board of Maryland Planning Commissioners. The Planning Board for the State of Maryland, who holds an Annual conference, is looking for representation from the county either from the Planning

Commission or Board of Appeals. Staff will provide more information to the members in form of a follow up email articulating what such involvement would entail.

- She recently approved a special exception for an accessory structure larger than 1,200 square-feet on a parcel less than 5 acres on Irelands Corner Road.
- Another Administrative Hearing is scheduled for May 16th on Porters Grove Road for an accessory structure over 3,000 square-feet and at a height of 23 feet. This building is also the site of a home occupation. The applicant is required to get a use permit for the home occupation.
- There has been some conflict with the tot lot in the Knight's Landing subdivision. In the last phase, the tot lot was required. Over the past several years, it has been an eyesore and has been vandalized repeatedly. At the request of the neighbors, the equipment has been removed. The tot lot will not be dissolved or otherwise developed. Currently, it is located at the end of a dead end street. If there is another phase in the subdivision, the tot lot may be more appropriated situated when that street is extended.
- Letters from Kees de Mooy were distributed to each member, cordially inviting them to the Gateway Park ribbon cutting ceremony May 7th at noon.

Stephanie Jones:

- The favorable recommendation for the Zoning Map Amendment the Planning Commission sent to the Kent County Commissioners last month was heard at the April 19th County Commissioners meeting. A public hearing is scheduled for May 17, 2016 along with a vote from the County Commissioners. It will then be sent to the Critical Area Commission and should be on the agenda for the Critical Area Commission meeting.
- Attended the quarterly planner meeting for the Critical Area Commission to discuss hazard mitigation and how to incorporate hazard mitigation into Buffer Enhancement Plans.
- The Planning Commission will be hearing a request of Buffer Variance for an after the fact structure in June.

Katrina Tucker:

- Thanked everyone for participating in the April 19th Comprehensive Plan work-session field trip.
- Applications for Maryland Agricultural Land Preservation Foundation (MALPF) easement acquisition are due to the Department on 1 June 2016 and then must be submitted to the State by 1 July 2016. Due to continued limited funding, the MALPF Board of Trustees at their April 26th meeting decided to combine the FY2017 and FY2018 cycles and only accept applications this year. In addition, the Foundation has also placed a cap on the number of applications that can be submitted for appraisal. A maximum of eight (8) applications may be submitted from each county. All owners of property enrolled in the local Kent County Agricultural Preservation District have been notified by mail and may make an appointment with staff for assistance in completing the application.
- The last MALPF easement cycle was two years ago, and from eight (8) applications submitted in 2014 there were seven (7) farms that received offers from MALPF to acquire an easement.
- Comprehensive Plan update work-sessions will continue to be held on the first Wednesday of every month.

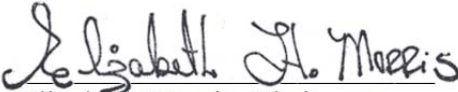
Mitch Mowell:


- He and Ms. Moredock attended a merits hearing on behalf of the County in front of the Public Service Commission Law Judge on the 26th of April regarding the preemption of local zoning requirements in the Mills Branch Solar case. Chris Drummond represented Keep Kent Scenic who has filed to intervene in the case. The applicants, their attorneys, and three assistant attorneys general were also in attendance representing various state agencies. All three attorneys general took the position that local zoning preempted in this case based on a 1990 Howard County case; the applicant naturally argued in support of preemption. The Public Service Commission Utility Law Judge denied the County's motion that the requirements of the County Land Use Ordinance are not preempted. The next step in the process involves a public hearing (to be held on June 21st) and 3 days of evidentiary hearings (to be held from June 22nd through 24th) scheduled in Kent County. The evidentiary hearings will be held in the Commissioners Hearing Room. The location of the public hearing will be determined by the PSC.

Mr. Mowell noted that the Judge's preemption ruling is the first loss in the battle, but the war continues. This is a case of first impression, and the PSC is basing its decision on a 1990 case that it is not supportable. He added that the next step for the County is to file an appeal of any approval of a CPCN in the Kent County Circuit Court.

General Discussion:

There being no further business for the good of the organization, the meeting was adjourned at 2:29 p.m.


Elizabeth Morris, Chairman


Tonya L. Thomas, Clerk