

MINUTES

Baltimore County Planning Board Meeting

April 2, 2015

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Minutes

April 2, 2015

Call to order, introduction of Board members, Pledge of Allegiance to the Flag, and announcements

Chairman Scott Phillips called the meeting of the Baltimore County Planning Board to order at 4:30 p.m.
The following members were:

Present

Mr. N. Scott Phillips

Mr. Paul Miller

Ms. Nancy Hafford

Mr. Mark Schlossberg

Ms. Lori Graf

Mr. Scott Jenkins

Mr. Jon Herbst

Mr. Howard Perlow

Mr. Eric Lamb

Ms. Christina Berzins

Ms. Michelle Lipkowitz

Mr. Jeff Gordon*

Mr. Wayne McGinnis

County staff present included: Andrea Van Arsdale, Jeff Mayhew, Lloyd Moxley, Matt Diana, Kathy Schlabach, Janice Graves, and Joe Wiley.

*Mr. Gordon arrived late

Absent

Mr. Scott Holupka

Review of today's agenda

Chairman Phillips asked if there were any changes to the tentative agenda. Staff stated that there were no changes to the agenda.

Minutes of the March 19, 2015 meeting

There was one correction to the March 19, 2015 meeting minutes. Mr. Miller moved to approve the revised minutes and Mr. Schlossberg seconded the motion, which passed unanimously at 4:35 p.m. Absent were Messrs. Gordon and Holupka.

Items for Deliberation and Vote

Local Open Space Waiver Fee Report

Andrea Van Arsdale, Director of the Department of Planning, began by presenting the contextual background of the requirements of Resolution 44-13. Director Van Arsdale stated that in Baltimore County, residential development projects are required to set aside 1,000 square feet of open space for each dwelling unit built. However, the Baltimore County Code allows a number of situations and conditions under which a fee may be assessed in lieu of providing the local open space on the development site. In 2012 the Office of Real Estate compliance was tasked with developing a new fee schedule that would reflect the County's lower real estate values due to the recession. Generalized land values were derived for each of the County's DR and RC zones. The County Council adopted the fees, but also struggled to understand the underlying process. Due to this, the County Council passed Resolution 44-13 asking the Planning Board to recommend a comprehensive, transparent formula for the manner of establishing open space waiver fees. The Department focused on developing an alternative methodology. The staff looked at the historic cost of acquiring open space over the past 10 years and used that number to create a ceiling of the possible local open space waiver fee alternatives. Over the past 10 years the County has spent \$21 million dollars to acquire 482 acres of open space, at median value of \$1,600 dollars per unit (which is similar to fees in adjacent counties). However, it was determined that the \$1,600 flat fee structure, when compared to the current formula being used, would result in less funding than what is gained under the current system. For that reason, the Department recommended retaining the current system.

Ms. Van Arsdale observed that while the formula was the main point of the Resolution, most of the speakers at the hearing focused on the fees for the CT District and dormitories. The LOS waiver fees reflect longstanding public policies to promote high density residential development in CT Districts, RAE zones, and for dormitories and housing for the elderly as per Resolution 63-00. The waiver fees recognize that redevelopment in CT districts is different from the typical suburban development occurring in the DR zones elsewhere in the County. Redevelopment costs are much higher in CT Districts and pioneer projects are difficult and expensive. Towson is trending upward, but still faces challenges and now is not the time to change the rules of the game with added costs. Also, urbanites have different recreational needs and desires than those of most suburban families and the existing open space requirement simply is not applicable in an urban context. For example, employing the current 1,000 SF per dwelling unit formula, the new Towson Row project would have to provide 14.9 acres of open space on their site. The site, however, is only 5.9 acres. The presentation concluded with mapping overlays showing the open space system in Towson.

Chairman Phillips opened the floor to Board members for comments and questions of Director Van Arsdale. Mr. Lamb began by asking what happened between the draft report and the current report. Why did the Planning Department initially criticize the existing system, but then end up not recommending any changes? Director Van Arsdale responded by stating that, in the end, the original formula produced more money. Mr. Lamb questioned why the draft report and the final report were so different. The Director stated that they were not different and that, ultimately, the flat fee formula did not generate as much money as the alternative formula investigated in the Local Open Space Report. Mr. Lamb further wondered what impact the Administrative Law Judge's (ALJ) decision regarding the 101 York project has on the open space fees, stating that the ALJ considered the current formula to be wrong and unreliable. Director Van Arsdale stated that the ALJ did not state that the formula was wrong, but that he believed the resolution enacting the fees expired.

Mr. Jenkins questioned whether or not the Board would have received the report had the ALJ not made the ruling that he did. He stated further that the Board asked multiple times for the report only to discover that the County Council received the report before the Board did. Director Van Arsdale disputed the timing accusation and responded that the Planning Department has limited staff and balanced the work required to finish the report with other demands. The Director confirmed that the copies of the report forwarded to the Council were provided as a courtesy to the Council. Mr. Jenkins further asked why the report itself has not changed despite all of the community input. Director Van Arsdale stated that the people who voiced their opinions so strongly at the public hearing did so because they were seeking localized funding for active recreational space in the Towson environs without understanding that local open space fees may be used elsewhere for other projects. She continued that the Local Open Space Waiver fee is not meant to fund major recreational uses. Further, the Department was charged with investigating a transparent and understandable local open space formula, which was done.

Mr. Gordon stated that there are two topics being discussed, recreational space and development. The Towson community wants more recreational space and is receiving two new turf fields. Also, development is occurring and growing the Towson economy. Mr. Gordon opined that the community seems to be getting what it wants and he is not sure what the Board is exactly struggling with.

Mr. Herbst wondered if it would be possible to raise the flat fee structure across the board but maintain the exemptions in C.T. districts. Director Van Arsdale responded by saying that the Department's charge was to create a replicable, transparent formula. If the policy makers choose to alter the fees, then that is their prerogative. Mr. Herbst clarified his point by asking if a flat fee might be more transparent than the current formula. Director Van Arsdale stated that if a flat fee process is agreed upon but then arbitrarily raised, it becomes subjective and not empirical. Mr. Herbst continued by saying that if the dorm fee exemption is reversed it could ultimately contradict why the fee structure was set in the first place, but that he understands the Towson communities concern regarding the lack of open space in Towson.

Ms. Hafford stated that over the past eight years Towson has changed dramatically, due in large part to new development coming into the area. She also said that she understands that there must be a balance between development and open space. She continued by stating that she believes that there is a way that this can be worked out, but that it is important to be reasonable. Ms. Hafford stated that it does no good to be hasty or have a knee jerk response to the fee report.

Mr. Perlow stated that Towson is an urban area and that this discussion must be framed in that context. Towson should not be treated the same way that Perry Hall is, because they are different environments. Open Space needs to be put into the context of the area. Does Towson need more ball fields or does it need more walking trails? Both are considered open space, but they are suited for different environments. Development needs to be done in the right way and the needs of Towson might be different than the needs of other communities. He also stated that other jurisdictions are lowering their fees to promote redevelopment.

Ms. Berzins stated that waiver fees are not and should not be the primary funding source for providing open space. Open space is critical, but what is considered open space in Towson is different than other parts of the county. The open space discussion should be brought up at the Capital Improvement Program meeting, not at the local open space meeting.

Mr. Miller asked what a finding is and stated that the term should be defined. Director Van Arsdale responded by saying that a finding is the term used to decide whether or not an open space waiver is appropriate for a particular development or not. Mr. Miller also asked where the fee amount of \$11.48 per square foot came from? Director Van Arsdale replied by saying she would check on that. Mr. Miller continued by asking if the ruling from the ALJ regarding the 101 York project would have changed according to this report? Director Van Arsdale responded by saying that 101 York is a PUD, and that the LOS waiver fees for dormitories is zero. Mr. Miller asked whether or not the Local Open Space Manual needs to be changed. Ms. Van Arsdale stated that the resolution did not charge the Department with that task. Mr. Miller stated that he thinks that the vote should be delayed until the Board has more time to go over everything.

Mr. Schlossberg stated that the Board was late to the game and is feeling under the gun to make a decision. He asked if there was any sense of urgency to make a decision tonight. Director Van Arsdale stated that that it is up to the Board and the Council. He also asked if the report researched other jurisdictions. Director Van Arsdale stated that data from other jurisdictions was cited in the report.

Mr. McGinnis stated that the need for open space, for the most part, is right where development is taking place. Too often the people who live in those communities where development is occurring never directly benefit from the fees.

Mr. Jenkins stated that he is not against any of the Towson projects, but he is concerned that the fees are too low. Money is needed for many things, and it has to come from somewhere. Mr. Jenkins stated that he thinks the proposal is not strong enough and that the fee number needs to be higher. Mr. Jenkins recommended voting down the report and sending it to the County Council for their opinion.

Ms. Hafford stated that she understands that the Council wants to get the report back. Wouldn't it be prudent to send the report back to the Council so that the issue can move forward?

Mr. Phillips stated that there are several options available: send the report back, make recommendations on the fee structure and hash it out more or reject the report and leave it to the County Council.

Mr. Lamb stated that he is not trying to kill any of the projects. He also asked how it is possible that the open space fees do not go towards acquiring open space. Mr. Lamb suggested restructuring the payment schedule so that the developer does not get hit with one large payment. Or, apply a flat fee and back off

some of the exemptions. Director Van Arsdale responded that the LPPRP states that open space and recreational space are funded primarily by Program Open Space, county bonds and general funds. The local open space fees are meant to fill in the gaps in funding that the other sources cannot fill. Mr. Lamb asked again why not raise the fees, roll back some of the exemptions and ultimately obtain more money.

Mr. Herbst cautioned against applying fees retroactively. The rules should not be changed in the middle of the game. A fee change, if needed, should be applied prospectively.

Mr. Perlow agreed with what Mr. Herbst said. Increasing fees and putting them on the developers will stagnate economic development. Mr. Perlow suggested that the Board not make the decision regarding what the fee amounts are. That should be a Council matter. Mr. Perlow stated that he thinks a motion should be made to approve the report with the understanding that the Council should investigate what the fees should be.

Mr. Schlossberg stated that he agrees with Mr. Herbst that any fee increase should not be applied retroactively.

Ms. Berzins stated that in the C.T. districts fees are lower because construction is more vertical and there is less space to develop. New development leads to other benefits, employment, property taxes, etc. She continued by saying that there is not a lot of development occurring in counties with higher fee structures.

Mr. Miller stated that he would struggle with a structure that applies a flat fee to the rest of the county, but applies a scaled fee system to the C.T. districts.

Mr. Jenkins stated that raising fees does not necessarily kill development, and that the numbers don't articulate that point (that raising fees stifles development).

Director Van Arsdale, responding to a question from Mr. Perlow, stated that the local open space fees accrued by the County between 2007 and 2014 averaged \$430,000 a year. Mr. Perlow stated that the County is getting money from developers, just not always through open space waiver fees.

Mr. Herbst made a motion to forward the Local Open Space Report with several recommendations: 1) Any increase in fees should not be applied retroactively, 2) The fees should be looked at by the Council, 3) The C.T. districts should be treated differently. Mr. Schlossberg seconded the motion.

Chairman Phillips stated that there was apparent un-readiness amongst the Board members and reworded the motion to the following. Be it moved that the Planning Board recommends the adoption by the County Council of the Local Open Space Waiver Fees report with the following recommendations: 1) that an increase in fees be considered by the council, 2) any increase in fees should not be applied retroactively, and 3) that the special provisions identified in Resolution 63-00 should be maintained. Mr. Herbst agreed with Mr. Phillips' suggestions.

Mr. Jenkins and Mr. Miller stated that they would not vote for the motion.

Mr. Lamb suggested that instead of adopting the report, the report be forwarded. He also suggested that the Council review when the fees are paid and how they are paid. Mr. Herbst agreed with Mr. Lamb's suggestions.

Mr. McGinnis stated that there were amendments made to the motion. Mr. Herbst accepted the amendments suggested by Mr. Lamb. Chairman Phillips again stated the resolution, but there was significant uncertainty about how to word the third clause. It was requested that the staff work on the wording. The Board voted on the amendments, which were approved with Mr. McGinnis voting against the amendments. Absent was Mr. Holupka.

The Planning Board voted on the motion made by Mr. Herbst. The motion carried at 6:26 p.m. with Mr. Miller and Mr. Jenkins opposed and Ms. Graf abstaining. Absent was Mr. Holupka.

The report was forwarded to the County Council with the following recommendations from the Planning Board 1) The County Council should consider an increase in the Local Open Space Waiver Fees; 2) Any proposed increase in Local Open Space Waiver Fees should not be applied retroactively; 3) The Planning Board recognizes and affirms the unique Local Open Space Waiver Fee schedule for the zoning classifications or uses identified in Resolution 63-00. The Planning Board recommends that the County Council should maintain this distinction in the event that the Council adopts new Local Open Space Waiver Fees; 4) The County Council should consider how the assessed Local Open Space Waiver Fee schedule for the zoning classifications or uses identified in Resolution 63-00 become due and payable.

Other Business

2. No Landmarks Preservation Commission meeting to report on

Mr. Diana gave a brief summary of the County Council legislation of interest to the Board.

3. Recent County Council Legislation of interest to the Board:
 - a. Resolution 16-15 – Transit Oriented Development in the Owings Mills C.T. District

Adjournment of Board Meeting

Mr. Lamb made a motion to adjourn the meeting. Mr. Miller seconded the motion, which passed unanimously at 6:30. Absent was Mr. Holupka.