

## DORCHESTER COUNTY PLANNING COMMISSION

MINUTES – May 4, 2016

The Dorchester County Planning Commission held their regular meeting on May 4, 2016, at 1:00 pm in the County Office Building, Room 110 in Cambridge MD. Members present were: Robert Hanson, Chair, Laura Layton, Vice Chair, Bill Giese, and Mary Losty. Also present were Steve Dodd, Director, Rodney Banks, Deputy Director, Brian Soper Critical Area Planner and Christopher Drummond, Attorney. Absent were Ralph Lewis and Jeffrey King.

Mr. Hanson called the meeting to order at 1:00 p.m.

Mr. Hanson asked for a motion to approve the minutes of April 6, 2016. Mr. Giese made a motion to approve the minutes as submitted and Ms. Losty seconded. The motion unanimously carried.

**OLD BUSINESS**

**A. P & Z #804E continued – OneEnergy Dorchester, LLC, applicant – Site Plan Approval. The applicant is requesting site plan approval to develop a Solar Energy System, Utility Scale project located at 3714 Linkwood Drive and containing 107 acres. Zoned AC, Agricultural Conservation Zoning District (Tax Map 43, Grid 10, Parcel 64).**

Gia Clark with OneEnergy Dorchester, LLC, Kevin Shearon of Davis, Moore, Shearon, & Associates, LLC and any other person who would be testifying concerning this application were sworn in.

Mr. Dodd advised that this is a continuation from the Planning Commission meeting of January 6, 2016, where the members voted to defer action on the application until the February meeting which was removed from that agenda. Mr. Dodd reviewed the issues the Planning Commission requested be addressed. Amend the buffer/landscaping plan to have a 20 ft. buffer on the western side of the project and provide final review comments from the Department of Public Works. Mr. Dodd advised that since that time, a third issue has arisen involving whether this project is exempt from the Forest Conservation Act.

Mr. Dodd advised that the amended plan does include the 20 ft. buffer and Greg LaBlanc, DPW has sent an email to Kevin Shearon dated April 25<sup>th</sup> stating that all comments have been addressed and the stormwater management plan is approved. Permits and fees will need to be addressed later.

Ms. Clark spoke about the Forest Conservation issue. She advised that a Certificate of Public Convenience and Necessity (CPCN) was issued last June, 2015. In the CPCN, there was language stating the project was not required to do forest conservation. Since then, there have been discussions with the Department of Natural Resources about whether this project will be required to comply with the Forest Conservation Act.

Mr. Drummond expanded on the issue. A CPCN, issued by the Public Service Commission (PSC) is required for most solar projects. The Public Service Commission receives information about the project from the Power Plant Research Program (PPRP) which is part of Department of Natural Resources (DNR). The PPRP produces a report with all the particulars of the project. The PPRP then makes a recommendation to the PSC as to whether a CPCN should be issued and what if any conditions should be included. At the time OneEnergy's CPCN was issued, the PPRP and the PSC thought that if the solar arrays did not involve the removal of woodlands, it did not trigger the Forest Conservation Act. Some time later, the PPRP began to reassess whether projects not involving the removal of trees must still meet the Forest Conservation Act. They decided these projects need to meet the Act and they had made an error with prior projects. The PPRP changed their recommendation for OneEnergy projects in Kent and Somerset County stating if a CPCN is issued, compliance with the Forest Conservation Act is required. OneEnergy opposed and was joined by the PSC staff through a number of hearings. A judge issued two decisions in April of this year. (1) The Maryland Forest Conservation Act does not yet apply to either of these projects because it is triggered by a request for sediment erosion control and grading permits; neither project has requested these permits yet. (2) The local forest conservation ordinances in Kent and Somerset Counties do apply and are not preempted, therefore the PPRP conditions of so many acres being planted do apply. OneEnergy does not intend to seek a review of this decision. They will be required to plant or mitigate the required number of acres in these counties. The PSC staff will request a review of this decision in early May.

Mr. Drummond advised that OneEnergy is before the Planning Commission today to request they not be required to mitigate this project because they were issued the CPCN before the PPRP changed their recommendations. Mr. Drummond also advised that he has been in contact with OneEnergy counsel and they are arguing for the Dorchester County Planning Commission to conclude that forest conservation is not required because the CPCN was issued last year.

Ms. Clark would like to get site plan approval even if the forest conservation issue is not addressed today. Mr. Hanson stated that the forest conservation could affect the site plan layout, depending on how many acres are involved. Mr. Banks advised that afforestation would be at 20%, or up to 16 acres. Ms. Clark advised that they are working with Steve Whitten of Whitten, Fink & Associates, to determine the total acreage needed to comply with the Forest Conservation Act.

Ms. Losty questioned the differences in language among the Dorchester, Kent and Somerset County forest conservation ordinances. Mr. Drummond advised that they are similar and are triggered by the same reasons. Mr. Dodd stated that the Forest Conservation Act is triggered locally by two things, (1) subdivision of land or (2) grading permit (required if disturbance is over 5,000 sq. ft.). Mr. Dodd pointed out that the project will require a grading permit and questioned whether the Department of Public Works will be able to issue a permit unless this project has complied with the Forest Conservation Act.

Mr. Hanson asked if OneEnergy could work with staff to find a solution and then return to the Planning Commission. Mr. Shearon pointed out that the landscaping, maintenance and surety is tied to the building permit. He suggested the forest conservation could be tied to these in order to proceed with the project, with the understanding that a building permit could not be issued until all this has been addressed. He also stated that OneEnergy understands that if the footprint of the project changes, it would have to come back before the Planning Commission for approval.

After a brief deliberation, Mr. Hanson called for a motion. Mrs. Layton made a motion to table until next month or until the forest conservation issue can be resolved. Mr. Giese seconded and the motion was unanimously carried.

**B. Presentation – Revised Critical Area Ordinance, Planning Commission review process.**

Discussion continued on the revised Critical Area Ordinance. Mr. Soper advised that the definitions were taken directly from COMAR and the Annotated Code. He spoke about changes to several definitions. In the past, an “in kind replacement” required an Administrative Variance. This will no longer be required. Mr. Soper also pointed out that the wording was changed in the intra-family transfer to include “siblings”.

There were several changes to language in the Administrative Variance section. Mr. Soper gave specific examples of these changes. He also talked about the Buffer Exempt Area (BEA) which is now called a “Modified Buffer Area” (MBA). He also talked about how the MBA setbacks are determined.

Mr. Soper spoke about the two items that are permitted in the buffer. They are in kind replacement and the construction of steps or landings built to minimum building code in the buffer.

Mr. Soper advised that the next step will be to send the document to the County Council to be introduced as legislation. Mr. Dodd advised this is a stand-alone ordinance that is new and since it is combining the language from zoning, subdivision, forestry, grading and agricultural codes that language will need to be repealed. The County Council will then refer it back to the Planning Commission with their formal recommendation. Mr. Dodd stated that once the document is introduced, the Council has 60 days to adopt it.

**NEW BUSINESS**

**A. POSTPONED** – P & Z #1103B – Shared Driveway Request – Cynthia Gerber for property identified on Tax Map 43, Grid 20, Parcel 243, Lots 1 & 2.

**B. Board of Appeals Cases – Review and recommendation**

The case scheduled for May was reviewed at the April Planning Commission meeting.

**INFORMATION**

None

With no further business, Ms. Losty made a motion to adjourn and Mr. Giese seconded. The motion was unanimously carried. The meeting was adjourned at 2:05 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "K. Giese", written in a cursive style.