

TO: Cecil County Planning Commission
FROM: HOA's and Open Space Subcommittee
Members: Austin Adams, Bill DeFreitas, Pat Doordan, Tony DiGiacomo, John Ewen, Van Funk, Jason Lydon, Tom McWilliams, Donna Tapley, Keith Thomas, Owen Thorne, Alan Ward, Norm Wehner, Tim Whittie, Ken Wiggins, John Vinc, Joyce Bowlsbey, Chair
DATE: October 15, 2007

RECOMMENDATIONS:

The primary purpose of a homeowners association is to manage a neighborhood's common areas such as storm water management areas, fire suppression tanks, parks, private roads, and recreation areas, including pools. Homeowners are obligated to pay dues which can range from \$50 to \$5,000 or more per year, depending on the neighborhood and its amenities. Storm water management, signage, common area grass cutting, as well as repair and snow removal of private roads, are usually included in the dues.

Homeowners are also obligated to live by the association's rule book, also known as covenants, conditions and restrictions (CC&Rs). An elected, volunteer board of directors is responsible for enforcing these rules. Homeowner associations have the right to foreclose on those who fail to pay their association dues. (See Sections 179 through 182, Article IX, Environmental Standards and Open Space of the Zoning Ordinance and Subdivision Regulations for Cecil County, Maryland) (attachment A).

The CC&Rs vary widely but typically work to unify the development, provide active and passive recreation areas, protect any historically significant resources, as well as natural and cultural resources. The regulations can specify such things as the kind of trees you can plant, where you can park your car, the number and type of outbuildings you may place on your property, the length of your grass and even the color of your house.

Recreational facilities can be problematic since many homeowner associations do not want to assume the liability associated with them. The liability accompanying tot lots, basketball courts, tennis courts, pools, etc. often times prohibits the HOA's from installing and maintaining them. This results in common open space becoming dormant and unused land.

In Cecil County there are currently over 140 homeowners associations that are defunct or that never formed once the development was turned over by the builder. Because of this, the committee agrees we need to look at remedies for existing developments separate from future developments.

Common Open Space:

It is the consensus of the committee that the use of Common Open Space in existing, as well as future developments, is a function of each community and should be determined by each individual HOA.

The consensus of the committee is that if recreational facilities such as a pools, tennis courts, marine facilities, basketball courts, tot lots, etc. have been installed by the builder/developer, it is suggested that a management company be hired to maintain the facilities. The cost of a management company would be included in the monthly fee and shared equally by all members of the community. If an HOA assumes the responsibility, they must do so consistently and in compliance with county and state regulations.

It was also agreed that much of the land dedicated to open space is unusable. However, the HOA should develop a strategy for any useable open space if the community is not utilizing it. Such uses might include agriculture and forestation. A plan should be formulated and kept on file with the HOA.

Common Open Space is tax exempt. If SWM areas are not maintained to County standards, then the common open space should be placed in taxable status and assessed equally among all homeowners in the development.

Existing Homeowner's Associations:

Maintenance and upkeep of Storm Water Management (SWM) areas is a primary concern of the DPW at the current time. The County is under strict State guidelines to enforce the upkeep of these areas. There are between 200-300 SWM ponds currently not in compliance with the State regulations and there are approximately 140 HOA's that are either defunct or not operating. Because of the current situation, the majority of the efforts of the HOA & Open Space Subcommittee has been devoted to problem solving this issue. Our recommendations are as follows:

1. DPW should determine the specific action to be taken to remedy the problem.
2. DPW should set a fair time limit to remedy the problem.
3. If the "fix" involves a large sum of money, more time should be given.
4. The need to cut trees, grass, etc. should be accomplished in the dry season.
5. The HOA (or individual homeowners) must show good faith progress in resolving the issue(s).

6. If the HOA (or individual homeowners) do not comply, then the DPW will complete the necessary work. It might be outsourced at the discretion of the DPW. The cost can be recouped by:
 - a. Paid by the HOA or individual homeowners
 - b. Special taxing district
 - c. County assumes cost with payment from General Fund (cost would then be spread among all Cecil County taxpayers)
 - d. Suspension of tax exemption

Future Homeowner's Associations:

Guidelines and expectations of HOA's must also be available to realtors, developers, and any perspective home buyer. The guidelines and expectations must also be included in each development's HOA charter and/or by-laws. Buyers will be required to sign a document at time of settlement that states they have knowledge of the HOA and have reviewed the by-laws of their development's organization if it exists at the time of settlement. If an HOA has not yet been formed, then acknowledgement of intent should be signed and agreed to by the buyer. The requirements for SWM, fire suppression and maintenance of common open space should be clearly defined and stated in the by-laws.

All potential homeowners should be required to visit the Department of Planning & Zoning to review their plat, surrounding areas, etc. and attest to their knowledge of what they are buying and their obligations to their HOA. The County could establish a computer program which allows the homeowner to complete this requirement via the internet.

The fee collected at time of recordation should be increased to \$500.00 per house and must be placed in an escrow account until it is turned over to the HOA or Management Company. The money cannot be used by the developer for any purpose. The account should be used as a maintenance and capital repair account by the HOA.

DPW should periodically monitor the existence of homeowner's associations throughout Cecil County as required by Article IX of the Zoning Ordinance and Subdivision Regulations. HOA's should file a copy of their by-laws and CC&R's with DPW. Legal action against any development that is not in compliance should be initiated if proof of an operating HOA cannot be produced.

