



NEWSLETTER

WWW.HARWOODCIVIC.ORG

APRIL 2014

PRESIDENT'S MESSAGE

We close out another year for the Harwood Civic Association with the Annual Meeting in May. We have received some good news on the litigation front as we won our appeal of the earlier dismissal of our suit by the Circuit Court. Below is a detailed update. The Annual Meeting of the Association, required by the By-Laws will be held in May as discussed below.

May is also the time to renew your membership in the Association. Our Association is a valuable tool in addressing the interests of the greater Harwood area and fight to keep South County rural, a fight carried on by our support for the litigation discussed below and our efforts to defeat zoning changes that would endanger the rural character of South County. We, therefore, encourage you to support our efforts by renewing your membership or to join if you are not now a member. Those that would destroy the character of South County are very well funded and supported by our County Council member. So, we need all the help we can get and a robust membership is an excellent selling point for our positions before elected officials and county offices.

Again, as I have said in the past, we also seek your help by volunteering to help us in our activities. We need members to serve on the Board of Directors, to help us with the newsletter, and to assist on projects that we may undertake.

I will be stepping down as President in May. I have been honored to serve the Association as President and appreciate the help and work of the Officers and Board during my tenure.

ANNUAL MEETING

It is once again approaching May and time for another Annual Meeting. This year the Annual Meeting will be at 7:00 PM on May 20, 2014, at the Galesville Memorial Hall. Please reserve that date. The Galesville Memorial Hall is on the Galesville Main Street next to the Post Office.

This Annual meeting will include three speakers. Erik Michelsen is the new Administrator of the Watershed Protection and Restoration Program for Anne Arundel County. Mr. Michelsen was recently appointed to this position by the County Executive and was formerly the Executive director at the South River Federation. Mr. Michelsen will discuss the current status of the Watershed Protection and Restoration Program with emphasis on local projects. Also speaking will be Jeff Holland, the new West Rhode River Keeper. Mr. Holland will update us on the activities of the West Rhode River Keeper program. Russell Stevenson of the Chesapeake Legal Alliance and a Visiting Professor at Georgetown University will also address our Annual Meeting. Mr. Stevenson is the attorney representing us and the other Plaintiffs in the litigation against the County concerning Comprehensive Zoning. Mr. Stephenson will discuss the status and way ahead on our litigation. See the article below concerning the latest Court of Special Appeals decision.

After the speakers we will conduct an Association business meeting to include approval of the slate of Board and Officer candidates. The floor will then be opened for members to raise any matters they might wish to and suggest any matters they might desire the Association to pursue.

CANDIDATES FOR OFFICERS AND BOARD OF DIRECTORS

Pursuant to the Association By Laws, the Board of Directors of the Harwood Civic Association nominates the following persons to be Officers and Directors for approval at the annual meeting.

Officers for a term of one-year ending May 2015:

President – Joan Turek

Vice President – Jan Lehman

Secretary – Tony Gamboa

Treasurer – John Guthrie

Board of Directors for a three-year term ending May 2017:

John Guthrie

Mike Stricker

Tony Gamboa

The terms of office of the following other members of the Board of Directors end in May 2015: Jan Lehman, Sherrie Lofton, and Joan Turek.

STATUS OF LITIGATION

The wheels of justice move very slowly, but we are happy to report that our appeal before the Court of Special Appeals against the dismissal by the Circuit Court of our case against the County was granted. The Court of Special Appeals reversed the Circuit Court and ordered the case remanded to the Circuit Court for further proceedings. Harwood Civic Association, Inc., et al. v. Anne Arundel County, et al., No.1733 (MD Spec. App. 2014)(Unreported).

Background. We have reported on this litigation in prior issues of this Newsletter, October 2011, February 2012, Spring 2012, which provide additional background. The suit was filed on October 6, 2011, by the Harwood Civic Association

and several other Associations and individual Plaintiffs. The suit challenged several rezoning actions approved by the County Council as part of the decennial comprehensive rezoning process. We, the Plaintiffs, sought declaratory judgment that certain rezoning provisions of Bill 44-11, the Councils rezoning bill, were unlawful, in part for failure to follow the General Development Plan (GDP) and the Small Area Plan, and we requested injunctive relief. The owners of several rezoned properties intervened to join the County and the defendants filed a motion to dismiss the complaint. On March 27, 2012, the Circuit Court dismissed the complaint for lack of standing, failure to join necessary parties and failure to state a claim on which relief could be granted. However, the Court granted the Plaintiffs leave to amend their complaint.

The Amended Complaint. Plaintiffs filed an amended complaint on April 26, 2012. Plaintiffs, which included owners of fifteen properties in the County, challenged seven of the amendments contained in Bill 44-11 asserting that these rezonings injured them because they lived in or near the rezoned properties and also alleged injuries such as reduction of property value, reduced enjoyment of their property, increase in traffic, the fear of increased property taxes, increased noise and light pollution, damage to the rural nature of the area, deterioration of wildlife habitat, increased runoff, and the pressure to allow additional, more intense commercial uses. Plaintiffs also contended that the rezoning was not consistent with the GDP that it constituted impermissible spot zoning.

Subsequent Dismissal of Amended Complaint. Defendants again filed a motion to dismiss which the Circuit Court again granted on October 11, 2012. The Circuit Court concluded that only two of the Plaintiffs had standing holding that proximity alone was not enough to confer standing in declaratory judgment actions and stating that the plaintiffs must allege how they are specifically damaged by definitive and competent evidence. The Court found that the Plaintiffs' allegations of injury did not constitute nonspeculative, special harm different from the general public. The court also held that

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challenges of inconsistency with the GDP and illegal spot zoning failed to state a claim upon which relief could be granted. The Court adopted the County's argument that the test in this situation was not whether the zoning was arbitrary, unreasonable, discriminatory or without substantial relation to the public health, safety, morals and general welfare, but whether the County Council was acting within its legal boundaries. Applying this standard the Court dismissed the complaint.

The Court of Special Appeals Decision.

Standing. The Court of Special Appeals pointed out that a party must demonstrate standing to invoke the judicial process. Standing depends on whether the party is aggrieved, personally and specifically affected in a way different from the general public. Further, challenges to land use decisions involve special damage requirements of standing principles. To satisfy this special damage requirement a party must allege proximity to the affected area and show that the party is prima facie aggrieved by being an adjoining, confronting, or nearby property owner or is almost prima facie aggrieved by being further away and alleging other plus factors supporting injury. The Court of Special Appeals held that the stricter standing rule for declaratory judgment actions applied by the Circuit Court no longer applied to declaratory judgment actions challenging zoning ordinances in light of its recently decided decision of on the issue. The court then reviewed the allegations for each of the amendments challenged against the above-discussed requirements and found that all but one met the prima facie aggrieved test. With regard to one last challenged amendment, the plaintiff was farther away than required for being prima facie aggrieved but close enough to be considered almost prima facie aggrieved. The Court remanded the case for the Circuit Court to allow appellants to amend their complaint regarding the plus factors. The Court ruled that the injury alleged by appellant as to that amendment, traffic and fear of a change in the character of the neighborhood were not enough but were injuries that affect the public at large. However, the Court said that noise could be a factor to consider and remanded the case for the appellant to amend the complaint to add additional

allegations as to noise if possible.

Failure to State a Claim on Which Relief Can Be Granted. The court of Special Appeals stated that its review of this issue was limited because since the lower court's already dismissed the challenges to all but one of the amendments for lack of standing, the further blanket dismissal of the complaint for failure to state a claim on which relief could be granted was an unnecessary ground for dismissal. The Court of Special Appeals, therefore, reviewed this ground for dismissal only as it applied to the two plaintiffs challenging the one amendment where the lower court found that standing existed. The appeals court recognized that judicial review of an agency's quasi-legislative actions is limited to assessing whether the agency acted within its legal boundaries. However the court disagreed that the standard provided as much discretion as claimed by the county. The legal boundaries standard does not preclude challenges to specific parts of an ordinance rather than generalized attacks. The Court of Special Appeals cited a Court of Appeals case wherein the court found that a court could overturn a rezoning decision that was irreconcilable with the comprehensive plan and that provided no supporting facts in the record for the decision. The Court of Special Appeals then concluded that the legal boundaries standard did not preclude the specific spot zoning challenge of the two plaintiffs to the amendment where the lower court found standing and that the lower court should have reviewed this challenge.

The Court of Special Appeals also addressed the applicability of certain legislation that the Plaintiffs argued required consistency with the GDP. The county persuaded the lower court that these provisions were not binding on the County Council in the comprehensive rezoning. The appeals court also pointed to later clarifying legislation concerning consistency with the GDP, also cited by the Plaintiffs, as being applicable to this case. The Court of Special Appeals also directed the lower court to consider this later clarifying language on remand

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Plaintiffs' attorney, Russell Stevenson, is working on this case on a pro bono basis. He has devoted many, many hours to this case and alone has fought against the many attorneys of the defendants. We owe him many thanks for his hard work and devotion to our case. Mr. Stevenson told us in his recent letter to clients and supporters:

I wish I could say that this amounts to complete victory. The other side could still seek to appeal the case to the Court of Appeals, although they would have to convince the Court of Appeals that there are reasons it should hear the case. If the other side doesn't try to go to the Court of Appeals, or fails to persuade it to take the case, we are back in Circuit Court, in effect starting all over, although with the applicable law clarified, very much in our favor.

The County has since applied to the Court of Appeals for certiorari to review the decision of the Court of Special Appeals.

After the disappointing dismissals by the Circuit Court, this decision of the Court of Special Appeals is encouraging and should raise our spirits. Pursuing this litigation to a successful conclusion will be a big help in subsequent decennial comprehensive zoning.

Anne Arundel County Public Water Access Committee

Did you know that Anne Arundel County has 540 miles of waterfront? With land fronting the Chesapeake Bay, and the Patuxent, Magothy, West, South, Severn, and Rhode Rivers, this fact does not seem surprising. What is surprising is the negligible amount of public water access to these bodies of water. Some of the access is private and controlled by waterfront communities. In other cases the waterfront is inaccessible because the infrastructure, which would allow for public access, is lacking.

Recognizing that public appreciation of resources is closely tied to the ability to use these resources, a

group of citizens formed a committee to study the problem. Their mission is simple: to improve public water access throughout Anne Arundel County. Water access is categorized as "thin", which includes properties, which allow a waterfront view or a walkable beach and "thick", which allows for cartop or trailerable boat access. The committee has been charged with identifying locations for specific projects, which could be implemented on a short or long-term basis. At a recent meeting County Executive Laura Neuman expressed her support for the committee's efforts and requested that it choose one small immediate project and one larger long term one.

The committee works with the Anne Arundel County Department of Recreation and Parks and meets monthly in Millersville. The next meeting is Wednesday, April 9, at 6:00PM. Former HCA president, Mike Lofton, is the chairman of the committee. Contact him at MSL49@aol.com or 867-3623.

PATUXENT RIVERKEEPER

The Patuxent River runs north to south for 110 linear miles through seven Maryland counties before emptying into the Chesapeake Bay. The office of the Riverkeeper was founded in 2004 as an advocate for the restoration and protection of clean water in the river. Fred Tutman, his staff, and citizen volunteers patrol the river, investigate pollution complaints, and monitor restoration projects. The Patuxent River Trail provides cartop boaters with an opportunity to enjoy the beauty of the scenery and the wildlife indigenous to the area. Their headquarters at 7412 Nottingham Rd, Upper Marlboro, MD, sponsors river excursions and rents kayaks. The phone number is 301-579-2073. Fred Tutman can be reached at fred@paxriverkeeper.org.

HARWOOD REAL ESTATE MARKET

In 2013 twenty-four homes were sold. Twenty-one were traditional detached homes and three were of the manufactured variety. Four of the homes were historic homes built before 1860. Four properties included acreage of ten acres or more. None of the detached homes had less than one acre. The manufactured homes sold for an average of 85% of the asking price while detached homes averaged 95%. The most expensive property sold for \$900,000 while seven additional homes sold for more than \$500,000. The average selling price for a manufactured home was \$32,300.

Seller subsidies continue to be a factor in the market. One third of the sellers contributed something to facilitate the sales of their homes. These ranged from \$2800 to \$17,000.

Sellers are also concerned about the amount of time it takes to sell their homes. Of the twenty-four homes, eleven of them were under contract in less than sixty days. Six of them took more than two hundred days.

The first quarter of 2014 has resulted in four properties being sold, nine going under contract, and ten remaining in an active status. The selling prices ranged from \$426,000 for a rancher with four bedrooms and two and one half baths on two acres to \$695,000 for a seven-acre property, which included a guesthouse and a barn. The asking prices for the properties under contract range from \$255,000 for a two bedroom, one bath rancher on less than an acre to a four bedroom, three and one half bath colonial on 3.27 acres for \$750,000, and a farm with fifty-three acres and house and barn for \$750,000. The most expensive active listing is a farmhouse with four bedrooms and three baths on fifty-five acres for \$924,900.

Harwood continues to offer an eclectic mixture of homes in all different styles and price ranges. There is no such thing as the average price of a house in Harwood. There appears to be some improvement in the number of homes going under contract. The second quarter and some better weather will hopefully bring together more buyers and sellers.

COVE POINT

A heated debate is raging about a facility on the bay south of us in Calvert County. Although it is south of us it is still something that Harwood area residents should be aware of.

The Dominion Cove Point Liquid Natural Gas (LNG) Terminal is located on the Bay in Calvert County in Lusby, MD. From 1978 to 1980, this terminal received Algerian natural gas from ships through a tunnel beneath the bay. At that time the Algerians demanded an unacceptable price increase and the facility fell into disuse. In 1994 the terminal was transformed into a facility for the storage of domestic natural gas. A liquefaction unit was installed for cooling the natural gas into liquid form. In 2002 Dominion acquired the facility and in 2003 importation of natural gas resumed. In 2009 Dominion completed a substantial expansion of storage and production capacity of the facility.

On April 13, 2013, Dominion filed an application with the Federal Energy Regulatory Commission (FERC) to add liquefaction and export facilities to the Cove Point terminal. Dominion proposes to spend \$3.8B on these added facilities. Dominion intends to export liquefied natural gas from the terminal to other countries. Natural gas would be received at Cove Point through existing pipelines and be liquefied at the facility for export. It is more efficient and takes less space to ship the natural gas on ships in a liquid form. The modified facility will have the capacity to export 5.75 million metric tons per year of LGN.

The applicable approval process involved is lengthy and multi faceted. In September 2013, the Department of Energy granted conditional approval to Dominion to export approximately 770 million cubic feet of natural gas per day from Cove Point. Dominion must still obtain approval from the FERC to begin construction of the expansion. The FERC is conducting an Environmental Assessment instead of the more rigorous Environmental Impact Statement. FERC will also hold a public hearing in Calvert County. Senators Mikulski and Cardin wrote to FERC requesting five public hearings throughout Maryland but the FERC denied this request last month saying a hearing in the county where the facility is located is sufficient.

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Additionally, Dominion requires the approval of the Maryland Public Service Commission for the 130-megawatt power plant Dominion will construct in support of the expansion for export.

There has been considerable controversy over Dominion's proposal. Environmentalists and other opponents argue that exporting LNG will increase net greenhouse gas emissions through increased reliance on fossil fuels and provide incentive for hydraulic fracturing, the process of fracturing shale rocks to release gas. Currently hydraulic Fracturing is not allowed in Maryland pending a scientific study on its impacts. Critics also say that export of LNG will lead to an increase in the price of natural gas in the US. Additionally, opponents also argue that an Environmental Impact statement should be conducted due to the expansive scope of the project and its impacts beyond Calvert County. Proponents of the project cite its economic impact in the jobs it will create, the expenditures that are to be made and the taxes governments will receive. Dominion also states that if the export facility is not allowed here, it will be allowed elsewhere.

CALENDAR OF EVENTS

April 4. Opening Day, Anne Arundel County Farmers' Market. The Farmers' Market will be open on Saturdays, April 5 – December 20 from 7:00 AM to Noon and on Tuesdays, May 27 – September 30 from 7:00 AM to 1:00 PM. The Market is at 275 Truman Parkway, Annapolis, at Rive Road. New items at the Market are wine, beef, chicken, lamb, pork, cheese, eggs, honey, jams, jelly, spring vegetables, plants, herbs and crafts. In case of inclement weather call 410-349-0317.

April 24 – 27. Muddy Creek Artists Guild Art Show, Galesville Memorial Hall, next to the Post Office on Galesville Main Street.

April 25. Annual Privateer Party at Historic London Town and Gardens, Edgewater. Celebrate 20 years of the London Town Foundation. \$100.00 per person.

May 2 & 3. Annual Spring Plant Sale, Historic London Town and Gardens, Edgewater. Members receive a 10% discount. Members may renew their membership at the same time. Friday, May 3 – Members Only Preview, 4:00 to 7:00 PM. Saturday, May 3 – Public Plant Sale and Family Program, 8:00 AM to Noon. The sale features perennials, shade plants and heirloom vegetables.

May 3. Community Square Dance, Galesville Memorial Hall, Galesville Main Street next to Post Office. 6:00 PM – Pot Luck Dinner/optional. 7:00 PM - Family-friendly dancing. 8:30–10 PM – More challenging dancing.

May 4. Model Boat Display, Galesville Heritage Museum, Galesville Main Street, 1:00-4:00 PM.

June 7. “Grand Finale”, Londontowne Symphony Orchestra, 7:30 PM, Indian Creek School. This concludes the 10th anniversary season. The orchestra will present Tchaikovsky's Swan Lake Suite, Dvorak's Carnival Overture, and Zino Bogachek from the Washington National Opera in Bruch's Violin Concerto No. 2.

June 18. Captain Avery Museum sponsored excursion: Winterthur Museum, Gardens & Library, Winterthur, DE. Enjoy the **Costumes of Downton Abbey Exhibition**. Reservation deadline is May 8. See the Museum website for further details.

June 21. Farm Day, Anne Arundel County Farmer's Market, 275 Truman Parkway, Annapolis at Rive Road. The program will include pony rides for children and music.

Route 2 Turn Lane Situation

For more than five years there has been concern and discussion on the subject of safety at and around the intersections of smaller roads and driveways with State Highway 2 in South Anne Arundel and Calvert Counties. A large part of this area lies in Harwood. There has been an ever increasing volume of traffic to and from locations to the south and Rt 2 is one of only two possible paths.

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There have been numerous accidents including a number of fatalities. Most of these accidents have involved cars traveling at road speed on Rt 2 colliding with cars turning or waiting to turn at one of the intersections in Harwood or Lothian.

HCA has raised the issue of the need for safety improvements along this section of Rt2 in the past.

In 2012 the State Highway Administration revealed plans to install turning and passing lanes along with other upgrades at five intersections in the Harwood/Lothian areas and one in Calvert County. When the details of these plans were made known HCA and the affected property owners took exception to the scale which seemed excessive. HCA felt that the changes proposed would encourage higher speeds and increase the probability and severity of collisions and make the already difficult problem of local access to Rt 2 even more difficult and dangerous.

Several attempts to mitigate these designs have been made by means of letters to and meetings with SHA with no avail. Alternates have been proposed such as reduction of the speed limit, better signage, and installation of circles, such as the one in Lothian which seems to function quite efficiently, but all have been rejected.

County Executive Laura Neuman, in response to a request, came down last July to see things for herself and wrote to SHA with several suggestions for improvements. The SHA response was negative to all. (See SHA letter at www.harwoodcivic.org)

The present status of the project/s is, as far as we know, as follows: The intersection at Fairhaven/Jewell Rd. is completed. The intersection at Rt 255 is underway with utility moving taking place and a ditch south of 255 east of Rt 2 which seems to have replaced one more or less similar under way. The SHA letter to Ms Neuman says that they anticipate beginning work at Owensville Sudley Rd. in September 2015. We have heard that the funding for all the proposed work is in hand and that acquisition is underway.

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