

## Minutes of the Third Impacts of Growth Subcommittee Meeting

The third Impacts of Growth subcommittee meeting was held on February 20, 2014 from 1 – 4 pm at the Chamber of Commerce in McHenry. In attendance were Bob Browning, Steve Green, Willie Lantz, Eric Robison, Rich Orr, Paul Weiler via teleconference and Deborah Carpenter.

The minutes were approved as submitted.

Speakers for upcoming meetings are as follows:

- March 13 – Craig Umbel is confirmed. Steve Sherrard has yet to respond. Jeff Broadwater, who had responded in the affirmative for Public Utilities has taken on a different post. He suggested that Richard Shoemaker and Pat Hudnall take his place. Debbie has confirmed with both Shoey and Pat and they will attend.
- April 10 – Eric Null has yet to respond.

Discussion on draft purpose and goals ensued. Deborah stated that the Purpose and Goals as voted upon at the last meeting need to be revisited on the basis of two occurrences – an email from Brian Greenberg and statements made by the Steering Committee at their last meeting. Both center around goal #3 currently stated as: Promote land use policies that ensure environmental and economic sustainability. Brian's email suggests adding the element of lake use by restating it to read: Promote land and lake management policies that ensure environmental and economic sustainability. The Steering Committee's comments revolved around the use of the phrase 'economic sustainability', stating that the word viability would be better served in that context. The group decided to table Brian's comments until we could discuss it more thoroughly with him. Further they decided that the Steering Committee's comments were well received and voted to change Draft Goal #3 to read: *Promote land use policies that ensure environmental sustainability and economic viability.*

### Educational Session

Jim Torrington, Assistant Director and Reggie Breeding, Stormwater Engineer of the Office of Permits and Inspection Services and Dave Ritchie of the County Engineering Department visited the group to discuss stormwater regulations in the county in regard to both developments and roads. The first issue raised came from Eric who stated that sometimes stormwater controls are taken out after inspections. Bob mentioned that he knew they inspected sites every three years and opened up the floor to them to address the concern. Reggie stated that on the single family sites, especially on steep sloped areas around the lake, there have been instances where a structure has either failed or not been properly maintained. They haven't necessarily been taken out. What usually occurs is their office will receive a complaint from the person down slope from that house where the structures are insufficient for whatever reason. At that point they will go investigate, find the source of the problem and work with the landowner to remediate it. They do try to compare the current inspection to any past inspections and if a structure has been taken out, they'll be able to see that. Commercial projects are handled differently. Those projects have to obtain a permit, a bond is instituted, and will be released when a certified engineer verifies the as-built. After that every three years Reggie goes back out and does a full inspection of those stormwater structures. Eric stated that if it's a lakefront home and there are no down slope residents to file a complaint, then there is the possibility of poor stormwater features leading to excessive runoff into the lake. His concern is more directed toward landscaping style controls (like vegetative swales) that are more easily removed or altered than disconnecting a drywell, for example. Reggie stated that if a homeowner does not like the look of some landscape style structures they can always hire an engineer to design something more appealing or they can contact Reggie and he would be glad to work with them to come

up with an alternative. Eric clarified that he didn't think the issue was one of aesthetics but more one of money. If a homeowner can save money by going with a vegetative swale or other landscaping features and those features can be easily altered in the future, should this be an issue that needs to be addressed in a regulatory manner that the subcommittee should fashion into a recommendation?

Jim Torrington stated that he felt the first thing we need to do is determine if we are having problems and then narrow down where these problems are occurring. Are we having problems with sediment entering the lake from single family dwellings? Before we institute watershed wide or countywide (as all stormwater regulations are countywide and not watershed specific) regulations in that regard it would behoove us to determine that first. Perhaps it would be more prudent, if there is an area of concern, to find it, determine what is happening there and work with property owners to fix it, rather than go a regulatory route. The county implemented a stormwater ordinance in 1984. It was updated in 2000. At that time, the stormwater engineer (Dave Ritchie) signed off on occupancy permits for all single family dwelling projects that required stormwater management. Commercial projects require a declaration of land easement to be recorded in the land records. The purpose of that document is to hold the current and all future owners of that property accountable for maintenance of stormwater features. We do not have that type of required documentation for single families. That is something that could be done on a regulatory level. Not all single family projects require stormwater permits. Before we go that direction, though, again, Jim feels there needs to be a list of identifiable erosion or stormwater management problems in the Deep Creek watershed.

Jim also noted that the County's Ordinance requires attenuation of up to a 10 year storm event, which equates to 4.2 inches of rain. We have had quite a number of larger storm events recently. It's hard to attenuate that when you're only providing stormwater for the 10 year discharge. He also noted that on a number of subdivisions we have stormwater controls in place but on the older ones, we do not. They pre-date the ordinance.

Willie fully agreed with Jim's statement about identifying problem areas. We need to take a step back from saying here are the problems and these are our recommendations to first identifying the problems. That doesn't lead to quick solutions but it does help to focus on the root of issues. He's concerned that we don't hamper an industry by making a broad sweeping regulatory recommendation only to find out that we really only needed to take care of localized problems. Willie further went on to say that the Steering Committee will be hearing a sediment presentation soon, and what the DNR folks seem to be saying is that yes, Deep Creek Lake is collecting sediment but it's not at an unusually high rate. He acknowledges though that Eric has brought up valid points that there are problems but how do we figure that out where and to what extent – a survey, a study, etc? Steve stated that Deep Creek is very healthy as far as nitrogen and phosphorus, but it would seem to him that there's not enough information on our shallower coves.

Bob mentioned a problem with runoff close to where his dock is in the McHenry cove below the fairgrounds. He knows the county has done a lot of work in regard to stormwater at the fairgrounds and he doesn't think it's coming from there; however there is still an issue. Jim stated that there is a perfect example of a known issue in a subwatershed. If the county is aware of it, they can focus efforts to remediate it. That would probably be the most efficient way to handle the issues. He also stated that his office has mapped all the stormwater features back to 1992, so that can be put on a GIS and clearly show what areas currently have stormwater structures in them. Willie noted that could also be included in the mapping that Christine Conn is creating.

Steve stated that sediment is a problem in some areas but we don't know if it's coming from development, roads, agriculture, etc. Perhaps a recommendation is to find out what we don't know. Bob concurred with that statement. Willie stated that he suspects that most of the sediment came in to the lake during its formation and

immediately thereafter prior to regulations. With the institution of agricultural bmps and sediment & erosion control and stormwater management we've probably seen a slowing of sedimentation compared to before. Bob said that most problems do seem to revolve around the older subdivisions and developments and that is harder to handle. Willie stated that if we determine that there is a problem in an older subdivision he would feel bad saying that to those homeowners that they have to pay a large amount to fix it. As an alternative, it would seem to him that one of those type spots would be a prudent place for the county or state or someone to come in and do some remediation work. Look at the problem that was at the fairgrounds – the county helped out a huge amount. Jim said he agreed, but he believes there could still be some potential fiscal responsibility on the part of the homeowner. Perhaps there could be a tax incentive that would encourage the homeowner to install stormwater features. Harvey's Peninsula was brought up as another example of an old development with problems. Dave stated that one of the issues there is close lots and no road right of way in which to install some remediation features. In some cases in these old subdivisions there is no room to install road remediation features without being on private property. Bob stated that to him it all boils down to velocity. If you can slow it down, it's much better in the long run. Harvey's is one of those examples where you have a problem, you know you have a problem but solving it is a little tricky. In some of these older places what the county can do is limited because remediation has to happen on private property. We also have to remember that it's not just a matter of remediation but then those features have to be maintained and who is responsible for that?

Steve asked Dave if there are best management practices on roads. Dave stated that any new roads would apply best management standards, but we rarely build new county roads. We generally spend most of our time on maintenance. As far as having some sort of booklet of best management practices that garages have to tell them things like when to put riprap in, etc, we do not have that. He stated that sometimes it takes time to change practices because workers tend to do things the way they always have. Plus, often it costs more and takes more time to do things in a best management type of way. It's not too hard to stabilize a ditch that only has water in it when it rains, but some of them have water in them fairly consistently and it's a little harder to get them stabilized. Bob noted that it would seem to him that we dig ditches that are deeper than necessary extremely close to the edge of the road. Even in places where sheeting is occurring over the road, it wouldn't seem a ditch that deep is needed, and they are dangerous to the driver. Dave said there are probably multiple reasons for those instances. Sometimes it's the history of the area – a knowledge of an unusual amount of water flowing there, or over time the ditch has gotten a little deeper with maintenance. Dave stated that as they maintain roads they do try to upgrade them to account for and improve stormwater and drainage issues. However, if they find that they need an easement to do some of the work and they can't get that easement, then they are limited in what they can do. Eric mentioned that putting in a rock trap at the end of the culvert is a good thing if you have room. Reggie noted a sump at the beginning of the culvert is better.

Eric stated that it sounds like everything new – roads and developments – are not something we need to worry about. What we need to focus on is the grandfathered instances and what to do about them. Bob suggested that a booklet of best management practices for the roads crews in every garage would be great and some education and commitment from the roads department to follow those whenever possible. Dave agreed and stated that it's not as though you'd have to develop your own standards. There's enough out there to pull from. Reggie brought back up though, that even with that, how do you go into these older subdivisions where there's not room to do this on county property and get them to install best management practices maintain them? Who's going to pay for it? Eric said incentivize. It won't be required, but they'll be more likely to do it if they get a tax break. Steve and Reggie stated a grant that would be available to help with those remediation instances might be a possibility as well. Reggie further stated a tax that will be earmarked for retrofit instances might work as well.

Some discussion of sedimentation in coves was held. Perhaps those coves could be a focal point for the study of where problems may be. Stream sampling has already been done in a lot of places as well and that data would help too.

Willie brought up the Bay Yardstick Program, which the Extension office is involved in and that Eric has mentioned a couple times. Its purpose is to try to reduce the amount of stormwater that drops pollution into the Bay. It started out as a voluntary program to encourage homeowners to put in small stormwater features on their properties. Now these owners receive some incentives in the form of some relief from the rain tax, which obviously does not affect us in Garrett County. The Extension office has a couple people coming up to talk to them about the program in April. He wondered if it would be worth it to have them talk to the Growth subcommittee or Steering Committee. Perhaps we could use the voluntary model adapted to benefit Deep Creek Watershed or any watershed. Eric stated that he thought some counties incentivized a similar model with a credit system towards your water or sewer bill. Bob stated that he thought the Lake Management office had brochures on rain gardens and such. In the interest of being proactive we should attempt to get as much educational material out there as we can. Willie said the way he understands the program the C-Grant educators go out and train a group of volunteers who then become the people that are helping the homeowners and homeowners associations with understanding what they need to do to reduce runoff on their properties. What happens is that if it is linked to an incentive program, the county then would want to verify installation. These volunteers would need to be trained to do the follow up and verification as well. There's also an educational program for landscapers to help them know how to install landscaping that is better at slowing or trapping stormwater. Eric noted a program such as that would also be very beneficial for builders. Willie asked Jim, Reggie and Dave if they felt this sort of program would have enough effect to make it worth the implementation of it. Eric felt that it is largely educational and eventually it will be worth the cost savings especially if it leads to less sediment in the lake. Bob wondered if we make every effort to capture stormwater on site, will that lead to a problem with reduced water levels. Reggie stated that natural recharge mechanisms will ensure that water still makes it into the lake but should be much cleaner for having gone through a natural filtration. Jim stated that he thinks the Bay Program model is a good idea, but it doesn't account for maintenance costs. Every feature requires maintenance so an incentive to install does not create a commitment to maintenance.

Jim went on to mention that one thing we need to do is inventory what we have on our GIS system. The culverts, ditches, maintenance schedules, etc, would really help improve efficiency and help with locating potential sources of problems.

Bob said he could see a recommendation that encourages the Roads Dept to make best management practices information and education a priority and institute it as much as practicable. Dave acknowledged that there are probably some practices that aren't done that could be and often it's a matter of overcoming the initial resistance to doing work differently. The increase in cost may be balanced long term in some cases by decreases in cost of maintenance.

Rich asked for clarification of agriculture's role in sedimentation and Willie stated that there are laws in place that protect the streams. For example, farmers cannot spread manure within 10 feet of a stream and that includes manure from cows. This basically means that a farmer cannot let the cows within 10 feet of the stream. The question is who is enforcing that and the answer is no one. It's up to a neighbor to call and say the cows are in the stream and then MD Dept of Agriculture will send someone out to investigate. Jim mentioned that agricultural practices are exempt from erosion and sediment control permits.

### **Discussion of Objectives and Strategies pertaining to the Land Use Goal (#3)**

Deborah reviewed the data mining document which she parsed by goals. She noted that the color coded items showed past recommendations that were completed or on-going and those did not need to be reviewed today. The group should focus on those past recommendations that were not implemented that the group decides are worthy of revisiting as recommendations to the Steering Committee.

The first past recommendation the group discussed involved architectural standards. Bob mentioned that he does not like government intruding into private business, but he says we do have some buildings that look bad. Deborah suggested that we take a step back to decide whether the group feels that this issue is within their purview. The argument could be made that this discussion is not suitable to the watershed plan. The reason it is on the docket is because the public stated during the public session that development is having a detrimental effect on the aesthetics of the watershed. Eric thought the aesthetics mentioned were more in relation to the loss of tree cover due to building, not architectural standards. Steve pointed out that the Steering Committee is tasked to look at both recreation and economics in the MOU, so we should be going beyond the parameters of a traditional watershed plan. Bob stated that Deborah's point was valid but one can easily argue that as we are looking at the impacts of growth, aesthetics is definitely an impact that can affect economics. Bob would like to see us address it, and if the Steering Committee feels it's not an issue they can remove it. The group decided to frame an objective that encouraged the planning commission to strengthen the current architectural standards found in the zoning ordinance for commercial industries. The recommendation could be framed as follows:

**Objective: *It is recommended that the Planning Commission strengthen the current site design and architectural review standards applied to commercial developments within the watershed.***

The next past recommendation that that group looked at was to encourage the viability of traditional waterfront businesses. The group felt that this was still a very important issue, since the loss of commercial businesses to residential or rental uses decreases the amount of public access to the lake. Bob mentioned that a recommendation to this effect should be considered as a zoning recommendation and also as a recreational one. Rich felt that DNR encourages the retention of waterfront businesses but he did not feel that the county did much to encourage their viability. Willie stated that it would seem that the focus of Economic Development has been the encouragement of small businesses and that's exactly the type of business we see at the lake. Rich acknowledged that the office did help out some, but there is more that can be done. A sample objective and strategy could be framed as follows:

**Objective: *Encourage the continued viability of traditional waterfront businesses.***

**Strategy: *The County Office of Economic Development and the Chamber of Commerce should form a think tank to determine ways in which waterfront businesses can be supported and encouraged.***

**Strategy: *The think tank should revisit the two recommendations from the 2008 Comprehensive Plan to (1) work one on one with individual waterfront businesses at risk of being lost and (2) explore with the local tax assessor the potential for changes in the way that property assessment values are prepared for waterfront businesses.***

The next past recommendation considered concerned wind turbines in the watershed. The Comprehensive Plan recommendation was a countywide recommendation to seek legislation to establish setbacks from property lines; however within the watershed the current regulation is to not allow them at all. The group would like to encourage the Planning Commission to uphold the current policy of not allowing industrial wind turbines in the Deep Creek watershed. A sample objective would be:

**Objective: Encourage the Planning Commission to uphold the current policy of prohibiting industrial wind turbines within the Deep Creek watershed.**

The group then discussed possible recommendations staff mined from the minutes of the last meeting. The first to be considered was a recommendation to prohibit shale gas drilling within the watershed. Willie expressed a concern that if we prohibit it within the watershed we need to have a justifiable reason why it should not be permitted within the Deep Creek watershed when it might be allowed in any other watershed. He could see a reason that it would be bad close to the lake, but the watershed includes areas that are a good distance from the shoreline, and it may be harder to justify why those areas are not permitted when they are similar to areas just outside of the watershed. Eric pointed out that the Cherry Creek area, that is the most obvious area that matches what Willie was referring to, contains a tributary to the lake, and it's important to keep the tributaries protected from adverse effects of mining. Willie stated he also feels we are unfairly targeting Marcellus shale drilling. Mining in general is not something a vacationer wants to look at when they come to a resort area, whether it be coal, gas or any other extractive industry. He points out that a land owner a significant distance away from the lake but still in the watershed may want to get the financial benefit from the drilling and we should be able to show that being in the watershed is a valid reason to prohibit it if other landowners outside the watershed are allowed to do it. Yes, if a landowner is on Cherry Creek the water there runs to the lake, but an owner in the southern end of the county has land that drains to the Yough, or an owner in New Germany drains toward Savage. Landowners within Deep Creek watershed can say they're being unfairly restricted from the activity when the activity is no more detrimental than it is in any other watershed in the county. Willie realizes that it's a very controversial issue and it's tough for him because the farmers he represents are on both sides of the issue as well. He also points out that a large limiting factor is the fact that companies have to find a large enough contiguous tract of land to be leased (~600 acres), so the likelihood of finding that near the lake is probably already minimal. Eric said we have to look at not just the pad but also the associated plants and processing that goes with it. There is potential for accidents with all those activities and some of those do not require as much land. Bob was wondering if it's feasible to prohibit wellheads in the watershed. That way a landowner can still lease their land and reap the benefits of the activity without the activity actually being in the watershed. Eric agreed with that since the mining is happening 8000 feet below the surface and there is little evidence to suggest that any accidents occur at that level. Accidents occur on the surface. He suggested that perhaps we further clarify it to say that the vertical bore hole should not be in the watershed. Willie agrees with that suggestion. Eric mentioned that farmers can get out of preservation to enter in to the lease; however Willie clarified that it is not easy. The farmer has to prove that the farm is no longer viable. Willie would also like to see us look at what effect our recommendations would have. For example on the GIS system we can draw the 2000' buffer around the shoreline. Then, if we choose to not allow a wellhead in the watershed and a wellhead is set up just outside the boundary and it can reach in 8000', draw that as well and see what land area that leaves. It can be further refined by placing the tax parcels on there and eliminating those that aren't large enough to be considered for a lease. Eric mentioned that there is a map in Appendix E in the BMP report that showed, assuming the company gets the amount of leases necessary; with 8000' laterals they could reach 97% of the county. Bob likes the idea of the study, and could foresee a recommendation to prohibit wellheads within the watershed and to endorse a study that would show how that affects large landowners within the watershed.

Willie said we should also consider that though we are focused on fracking, the industry and technology are constantly changing. How do we adjust with the changes when they may come up with something that is less obtrusive in the future? Steve said he had thought about wording it to prohibit Marcellus shale drilling using current technology, but he wasn't sure how to define current technology that allows for more environmentally friendly technology down the road. The technology is moving so quickly, they may be on to a new technology before we even get a regulation in place.

Willie also noted that eliminating wellheads in the watershed does not eliminate the truck traffic associated with the activity. Bob stated the reality is that it is already happening. Drilling is happening around us in PA and WV and therefore the truck traffic is already coming through our county. Eric pointed out though that those trucks are probably using the main highways as opposed to trucks, if the practice is allowed, using roads like Rock Lodge Road and other county roads which, by their very nature, would seem to be more likely for accidents. Willie said at one point in time, there was discussion that if this were to be permitted in the county, we should require a transportation study, plan or permit in addition to the other permits. Steve said perhaps we should consider that if we do have an accident on a road do we have the emergency response capability to handle that type of incident?

Rich added that 75% of the money that comes into the county is from real estate taxes and of that almost 60% is from District 18. Therefore, if you ask if gas drilling in the watershed will have an effect on the county, the answer would have to be yes. He also noted the current regulations require a 2000' setback from the lake and a 1000' setback from any land not leased by the entity. Bob suggested that we seek clarification on whether the regulations are referencing the wellhead. Rich read from the ordinance and it says 'drilling for or removal or underground storage of natural gas subject to the regulations of MDE, the MD Public Service Commission and the Federal Energy Regulatory Commission.' Willie said there's a classic argument around whether 'underground storage' would encompass the drilling that is going on 8000' below the surface. Bob still thinks we need clarification. Eric said that all MDE's setbacks are referring to the well bore at the surface only.

Paul suggested we might want to consider restricting how far horizontally a company would be allowed to drill into the watershed. Willie said the question then becomes why is that important because that is happening 8000 feet underground and there's been no evidence to indicate adverse effects from that portion of the operation. Plus in order to penetrate far into the lake they'd have to have a significant amount of landowners to agree to lease their land. Especially as you get closer to the lake, that would be unlikely.

The meeting adjourned at about 4:30. Deborah suggested that this conversation as well as discussion about other possible objectives and strategies continue via email. Other possible objectives and strategies will include discussions of other industrial uses and loss of tree canopy. The next meeting will be held March 13<sup>th</sup> from 1 – 4 pm at the Chamber.

Respectfully submitted,

Deborah Carpenter