

# INDIAN HEAD HIGHWAY AREA ACTION COUNCIL, INC.

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Rev. 5

## CIVIC ACTIVISTS' GUIDE TO SURVIVING THE PLANNING BOARD

**ISSUE.** The Prince George's County Planning Board's Rules of Procedure (See: [Useful Links](#) below.) tell you how the system is supposed to work. If you have views contrary to those of a developer or builder applicant, you need to know that the deck is stacked against you (see Background below) and that your chances of influencing the outcome are problematic, but not necessarily hopeless. This Guide will provide information about the challenges you will face making your views heard and taken into account.

**Rx for SUCCESS.** It is essential that you file as a "Party of Record" as explained in the Rules of Procedure. In the application review process, make your views known early and often, both privately and publicly, both orally and in writing. To be effective, you should call and visit Planning Board staff members assigned to review the various aspects of the application, examine the files, discuss the project and express your views. Your goal is to have your views considered seriously and ideally incorporated into the Staff Report to the Commissioners on each application. If you can influence the content of the Staff Report, then you have a chance of being effective. By the time you get to the Planning Board hearing, it usually is too late to influence the outcome.

**ORAL TESTIMONY.** Your views will be given greater weight if you care enough to appear at the Planning Board hearing to voice them, but *only* presenting your views at the hearing usually is a waste of time. Hence the importance of working with Planning Board staff and submitting written comments, data, tables, etc. well before the Staff Report is written and before the hearing is held.

In appearing before the Planning Board, the applicants, their lawyers and experts will have virtually unlimited time to present their views in support of their applications. Speakers other than the applicant usually are not limited, unless they get off subject, are repetitious, fail to stick to the facts, or lose their cool and become emotional. Be professional or get tuned-out and possibly turned-off.

Nevertheless, you and your team should be prepared for the possibility that you could be asked to limit your presentation, typically to only three minutes. This is standard operating procedure when testifying before a joint hearing of the County/District Council and the Planning Board, or when appearing before the County/District Council alone, regardless whether you have gone to the expense of hiring an attorney or others to provide expert testimony on your behalf.

One strategy for overcoming this unfair and unequal opportunity to be heard is for you and your supporters to work as a team, each of you presenting three-minute segments of your overall testimony. If each member of your team takes up where the preceding one left off, then the totality of your testimony will be heard and on the record. Again, do not be repetitious; you'll get tuned out.

Planning Board hearings are loosey-goosey affairs. Do not expect a proper administrative or evidentiary hearing with sworn testimony, exhibits, objections, cross-examination, and such. The applicant's team will present its case in support of its application. Others will then be allowed to express their views, whether in support of, or in opposition to, the application. The Planning Board members often ask questions, then ultimately vote to approve, disapprove, or continue the case.

**WRITTEN TESTIMONY.** People testifying before the Planning Board are encouraged to present an Executive Summary of their views, with their entire presentation being submitted "for the record". This sounds reasonable and may make you feel better, but is not an effective way to influence the outcome, especially if the Board is going to vote on the case during that hearing. In short, that detailed and reasoned presentation on which you have labored for days, weeks or months and have submitted for the record, is just so much paper that no one but you will have read. Nevertheless, having all your information and data on the

record is essential in case of an appeal.

**APPEALS PROCESS.** In the event that your position does not prevail, you can file for “reconsideration” by the Planning Board. The Rules of Procedure provide: “A request to reconsider a decision of the Planning Board may be made by a party of record within fourteen (14) calendar days after the date of notice of the final decision.”

The case also can be appealed to the County Council sitting as the District Council. If you feel strongly enough about a case that you are willing to appeal an adverse decision by the Planning Board, it is critically important that all the evidence you need to make the appeal argument is submitted for the record. This means not only your testimony, but graphs, charts, traffic studies, whatever information and data are necessary to make and support your case. On any appeal, you can only use evidence included in the Planning Board hearing; no new information may be introduced. You probably should have a lawyer experienced in such matters and perhaps expert witnesses.

Further, it is critically important that you and each of the participants in your appeal is officially a Party of Record. To do that, you and they have to sign up at the hearing and speak, or write in before the hearing and ask to be made a Party of Record. This can be done online. Just submitting a letter, a brief or an email - either pro or con - does not make you a Party of Record. To become one, go to the Planning Board website and fill in the blanks. (See: [Useful Links](#) below.)

**BOTTOM LINE.** To be successful you must be proactive and not accept “no” for an answer. You will be fighting an uphill battle, but take heart, with perseverance and strong logical arguments professionally presented, occasionally it is possible to prevail.

## **BACKGROUND**

**STACKED DECK.** The Planning Board would be more appropriately named: *The Developers’ Board*. Personal attitudes and philosophies, as well as the system itself, are biased in favor of developers and builders and against anyone with contrary points of view. Planning Board hearings have the veneer of a fair and balanced judicial proceeding, but not the substance of one.

**DEVELOPMENT PHILOSOPHY.** Within and among members of the Planning Board and senior professional staff, there are philosophical conflicts between the concepts of *smart growth* and *legality* with a bias toward the latter. If a development proposal is *legal*, never mind whether it is *smart* or *stupid* growth, it must be approved (so they argue) by virtue of not being inconsistent with applicable laws and regulations. If one accepts this point of view and carries it to its logical conclusion, there is no need for a *planning* board or for professional planners, just for lawyers to pronounce on *legality*.

The Hyde Field case (May 2009) illustrates bias in favor of development at any price. The initial Staff Report found that the application was contrary to the Master Plan, did not meet a single criterion for approval and recommended disapproval of the project. Loath to disappoint a developer, commissioners twisted and tortured the logic until a revised staff report recommended approval with conditions. Anyone with common sense and a lack of bias would have accepted the staff recommendations and disapproved the application.

Prince George’s County is large enough that there is room for urban, suburban and rural living. However, development increasingly is threatening and squeezing the rural tier. One of many reasons for setting aside and protecting lands from development, is that the costs to government of providing community services are substantially less for farm and open land than they are for residential land, according to case studies conducted by and for the American Farmland Trust.

*Costs of Community Service Studies* in Minnesota, Massachusetts, Connecticut, New York, Vermont and New Jersey are consistent in showing that ***residential development does not pay for itself***. For every \$1.00 collected in taxes, community outlays for public services cost between \$1.04 and \$1.67. Conversely, those

same studies show that ***commercial and industrial properties, and farm and open land, generate far more income in taxes than they cost in public services.*** In short, every time the County approves a new residential housing unit, it digs taxpayers deeper into a financial hole; this is penny wise and pound foolish. (See References below for detailed information.)

### **NEED FOR CHANGE**

Lip service is paid to *smart growth, livable communities, and Gorgeous Prince George's*, but the reality is that the prevalent philosophy - and the system itself - favor development anywhere, any time, at any cost. This will continue unless and until the County Executive, County Council and Planning Board members and senior professional staff come to value *smart growth* and act accordingly. At present the various players sing from different song books.

Leadership starts at the top. County Executives need to appoint Commissioners who believe in *smart growth, environmental protection and historic preservation*, and who will place value on these and other quality of life issues/principles when evaluating development applications. Commercial and retail growth and revenue are essential to the county, but sites and architecture need to be context sensitive if we are to achieve livable/walkable communities which make Prince George's gorgeous.

Positive steps which the County Council can take include: (1) approving Planning Board appointees who can evaluate development applications on their merits; demonstrated commitment to *smart growth* should be a litmus test; (2) designing and enacting a transferable development rights (TDRs) program to protect the rural tier and to encourage development at transportation hubs like Metro stops; and (3) refraining from enacting text amendments, which politicize the development review process and render established (albeit imperfect) administrative procedures moot.

The Planning Board's Rules of Procedure need to be overhauled and discipline imposed. For example, perhaps each side of a case - applicants and opponents - should be limited to a fixed time limit, say one-hour for a complex case; 30-minutes for simple ones. Customarily, witnesses - especially for an applicant - are allowed to ramble on endlessly describing the merits of their project. In consequence, the Board often runs late and it is impossible in advance to judge when the Board will begin to take testimony on an issue about which you care. Too often, cases run so long that witnesses have to leave to keep other commitments and their views are not heard.

The County Executive, County Council members, and Planning Board members and their senior professional staff need to get on the right side of history and begin giving priority to quality of life issues when evaluating development proposals.

Civic activists can play a positive role by participating in the Planning Board Watch program - similar to Judicial Watch for judges - where the tortured logic and bias of individual commissioners can be revealed and publicized for all to see. Further, there is substantial evidence that some commissioners are not doing their homework and are arriving at Planning Board Hearings unprepared. Perhaps they can be shamed into honoring their oaths of office and to doing their homework.

### **USEFUL LINKS:**

For the Planning Board's Rules of Procedure, including Appeals for Reconsideration, go to:

[http://www.pgplanning.org/Planning\\_Board/About\\_The\\_Planning\\_Board/Rules\\_of\\_Procedure.htm](http://www.pgplanning.org/Planning_Board/About_The_Planning_Board/Rules_of_Procedure.htm)[Http://www.pgplanning.org/Planning\\_Board/About\\_The\\_Planning\\_Board/Rules\\_of\\_Procedure.htm](http://www.pgplanning.org/Planning_Board/About_The_Planning_Board/Rules_of_Procedure.htm)

To file to be a Party of Record, go to:

[http://www.pgplanning.org/Resources/Person\\_of\\_Record.htm](http://www.pgplanning.org/Resources/Person_of_Record.htm)

To send information to all the Planning Board Commissioners, send your email to:

[Commissioners@ppd.mncppc.org](mailto:Commissioners@ppd.mncppc.org)

## REFERENCES

**Senf, David. 1994. "Farmland and the Tax Bill: the Cost of Community Services in Three Minnesota Towns." American Farmland Trust.**

"As case studies, Cost of Community Service Studies' (COCS) findings are most important to their host communities. However, all COCS studies performed to date by American Farmland Trust (AFT) or other researchers have found the same general pattern.

As a rule, residential development does not pay for itself. Commercial and industrial properties, and farmland (or open space) generate significantly more revenue than they demand in services on an annual basis."

"Farmland in the seven-county metropolitan area of Minneapolis and St. Paul, Minn. Has been urbanized at nearly twice the rate of population growth since 1970, resulting in the loss of more than 150,000 acres, or 235 square miles of farm and vacant land. Since 1980, growth has occurred almost exclusively in the second ring of suburbs and, to a lesser extent, on the urban fringe. Slowing the pace of urban sprawl around the Twin Cities has been hampered in part by the property tax-dependent system of local government finance. Even with a nationally lauded property tax base sharing program and one of the nation's highest levels of state aid to local government, municipalities compete for new development to increase their tax base."

"Working with the Land Stewardship Project, a Minnesota-based farmland and social justice organization, AFT conducted COCS studies in three outlying Twin Cities Metro Area municipalities. On average, AFT found that the ratio of dollars generated by residential development to the cost of services provided was \$1 :1.04. In comparison, on average, for every farm dollar raised, only 50 cents was spent to provide services." (For every commercial/ industrial dollar raised, 39 cents was spent to provide services.)

"farmland protection may be financially beneficial, partly because of its contribution to the tax base, but also because of it holds down total property valuation. Lower property valuation leads to more state aid (in Minnesota), which reduces the share of local government costs paid for by community residents and property owners."

"By reducing the gap between residential revenues and costs, Minnesota's generous level of intergovernmental aid may be inadvertently accelerating the metro area's rate of urbanization."

**Freedgood, Julia. 1992. "Does Farmland Protection Pay?: The Cost of Community Services in Three Massachusetts Towns." American Farmland Trust.**

The ratios of revenues to expenditures for residential, commercial/ industrial, and farmland/ open space found in Agawam, Deerfield, and Gill, Massachusetts, are consistent with results in other Cost of Community Service studies. The average ratios were 1: 1.12 for residential land, 1: .42 for Commercial/ Industrial land, and 1: .33 for Farmland/ Open space.

"In AFT's Massachusetts studies, Farm and Open Lands in Agawam, Deerfield, and Gill required very little in the way of public services. They may not have raised much in terms of gross revenue, but neither were they a drain on town resources. This information should help towns resist the pressure to develop *simply to increase their ratables*, especially if they are expanding the residential base."

"Commercial and Industrial sectors were found to offset Residential deficits and certainly appear to play a key role in the towns' balance of land use. However, increasing these sectors is not a panacea either, as they may not always be pure revenue generators. For example, 'The Tax Base and The Tax Bill' (Vermont League of Cities and Towns and the Vermont Natural Resources Council, 1990.) showed that Vermont property taxes were highest in towns with the most commercial and industrial development. The study's authors suggest several possible explanations. One is that commercial and industrial developments can spur residential growth. Creating jobs, they often attract new people to town to fill them. 'It is the combination of new residents and the job-generating

development itself which drives the tax bills up. Finally, as towns become more populated, voters often ask their municipal government to provide more services such as sidewalks, police, town managers, etc."

"COCS studies do suggest that farm and open lands deserve consideration as revenue enhancers. In this way, they call into question the assumptions of 'highest and best use.' They challenge the notion that development options are always necessary for towns to ensure economic stability, and submit that development should not be judged solely on its gross addition to the tax base. Communities must consider the net effects of their land use in the present as well as in the future."

**Trust for Public Land. Background materials.**

The open space conservation program of the town of Cheshire, Connecticut, has been cited by Moody's in upgrading the town's debt rating. TPL has played a key role in implementing the program.

**Association of New Jersey Environmental Commissions. "Open Space is a Good Investment: The Financial Argument for Open Space Preservation.". 1996.**

"Studies show that for every \$1.00 collected in taxes, residential development costs between \$1.04 and \$1.67 in services -- and these costs continue forever, generally increasing over time. Even including the initial cost of acquisition, open space is less costly to taxpayers over both the short and the long term than development of the same parcel. The major public costs to preserve natural areas are finite, often paid by a bond or loan over 20 years.

A Burlington County Office of Land Use Planning study of Mansfield Township shows that for every \$1.00 in taxes that a new residential unit generates, it requires \$1.48 for services. Conversely, farmland costs \$0.27 in services for every \$1.00 it generates in taxes. Each new residential unit has a net negative fiscal impact of \$1,866 per year while preservation of the same land through the county farmland preservation program would result in a one time cost of \$3,000."

**Thomas, Holly L. February 1991. "The Economic Benefits of Land Conservation", Technical Memo of the Dutchess County Planning Department, Dutchess County, New York.**

"Land conservation is often less expensive for local governments than suburban-style development."

"The old adage that cows do not send their children to school expresses a documented fact-- that farms and other types of open land, far from being a drain on local taxes, actually subsidize local government by generating far more in property taxes than they demand in services. The opposite is true of most suburban forms of residential development. In other words, maintaining a substantial open space system is one important way of controlling the costs of government."

"A 1990 study of revenues and expenditures for various types of land uses in Red Hook, Fishkill, and Amenia, by Scenic Hudson, Inc. found that residential land required \$1.11 to \$1.23 in services for every dollar it contributed in revenue, while open land required only \$0.17 in services in Amenia, \$0.22 in Red Hook, and \$0.74 in Fishkill for each one dollar contribution."

"The Scenic Hudson and Cooperative Extension studies and others have shown that commercial and industrial land uses also demand less in services than they pay in taxes. However, it is important to remember that commercial and industrial growth encourages residential growth. Working farms do not."

**References & quotations courtesy of: Michael Kirschman, Division Director, Nature Preserves & Natural Resources; Mecklenburg County Park & Recreation; 5841 Brookshire Blvd.; Charlotte NC 28216; tel: 1-704-336-8798 (office).**

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