

IN THE MATTER OF THE APPLICATION * BEFORE THE
 OF THE MIDLAND COMPANIES, INC. * COMMISSIONERS OF ST. MICHAELS
 AND MILES POINT PROPERTY, LLC *
 * * * * *
 FOR AWARD OF GROWTH * TOWN OF ST. MICHAELS,
 ALLOCATION TO PERMIT CHANGE IN *
 LAND MANAGEMENT * MARYLAND
 CLASSIFICATION * * * * *
 FROM RESOURCE CONSERVATION *
 AREA ("RCA") TO INTENSE *
 DEVELOPMENT AREA ("IDA") * * * * *
 * * * * *
 RELATING TO THE CONCEPT PLAN *
 KNOWN AS THE "MILES POINT III, 150 *
 FOOT BUFFER/SETBACK PLAN" *
 * * * * * * * * * * * * * * *

FINDINGS OF FACT, DECISION AND CONDITIONS

BY THE

COMMISSIONERS OF ST. MICHAELS

FINDINGS OF FACT, DECISION AND CONDITIONS

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FINDINGS OF FACT, DECISION AND CONDITIONS

I. INTRODUCTION

This Findings Of Fact, Decision And Conditions (this "Decision") contains the findings of fact and decision, and the conditions to which that decision is subject, rendered by the Commissioners of St. Michaels (the "Town Commissioners") relating to the application for the award of growth allocation (the "Application") submitted to The Commissioners Of St. Michaels (the "Town"), a Maryland municipal corporation. The Town Commissioners constitute the elected governing body of the Town. The Application was submitted to the Town by a letter from Richard A. DeTar, Esquire, on behalf of Miles Point Property, LLC ("Miles Point").¹ The Application relates to land owned by Miles Point and referred to as the "Perry Cabin Land", the "Perry Cabin Farm", or the "Subject Property". The Midland Companies, Inc. ("Midland"), which previously had an interest in the Perry Cabin Land, has joined with Miles Point as an applicant. Miles Point and Midland are jointly and severally referred to as the "Applicant".

The Application and the development project, know as "Miles Point" and sometimes referred to as the "Proposed Project", are based on a concept plan known as "Miles Point III, 150 Foot Buffer/Setback Plan" (the "MP3-150 Plan").² Therefore, the Application is also referred to as the "MP3-150 GA Application". As depicted on the MP3-150 Plan,³ development of the Perry Cabin Land would be in the form of a traditional neighborhood development ("TND"), a style of development permitted and regulated as a TND floating zone under the St. Michaels Zoning Ordinance.⁴

The Perry Cabin Land consists 71.667± acres of land, consisting of "Parcel 2" and "Parcel 2A" as shown on a plat titled "Growth Allocation Plat, The Lands Of Miles Point Property, LLC And Part Of The Lands Of Perry Cabin Associates, Second Election District, Talbot County, Maryland; Prepared For The Midland Companies," dated September 2003, and prepared by McCrone, Inc.⁵ All of the Perry Cabin Land, with the exception of 1.304± acres,⁶ is located in the Chesapeake Bay Critical Area (the "Critical Area").⁷ All of the Perry Cabin Land that is located in the Critical Area has the Critical Area land classification known as "Resource

¹ An exhibit entered in the quasi-judicial record of this proceeding is referred to simply by the word "Exhibit" or "Ex," followed by the number corresponding to the exhibit being referenced. The list of all exhibits entered into the record of this proceeding is the last exhibit, being Exhibit 423. See Exhibit 332, letter from Richard A. DeTar, Esquire, dated September 28, 2005.

² See Exhibit 227, the MP3-150 Plan.

³ *Id.*

⁴ See Exhibit 373, Zoning Ordinance, Section 5 (Zone Regulations), Subsection 15 (Traditional Neighborhood Development (TND) Zone). The text of the Zoning Ordinance was amended by Town Ordinance No. 297 (Exhibit 18) to create the Traditional Neighborhood Development (TND) floating zone. The Applicant has applied to the Town for designation of the Subject Property as a TND floating zone. That application is pending.

⁵ See Exhibit 29, Growth Allocation Plat, Perry Cabin Land, by McCrone Inc., dated Dec. 2003; and Exhibit 372, Site Statistics, revised January 2006.

⁶ *Id.*

⁷ See Maryland Code, Natural Resources Article ("NR"), § 8-1807 (a).

Conservation Area”, also know as “RCA”. As will be explained in more detail,⁸ the density of development located in the RCA is not permitted to exceed one dwelling unit per 20 acres without obtaining the required quantity of “growth allocation”.⁹ The MP3-150 Plan indicates development in excess of that permitted in the RCA.¹⁰

Growth allocation allows a property owner to convert his land in the Critical Area land classification of RCA to another Critical Area land classification, thereby permitting development in the Critical Area at a density in excess of one dwelling unit per 20 acres. The Critical Area land classification known as Intensely Developed Area, also know as “IDA”, allows development in the Critical Area at a density of four dwelling units per acre or more, or man-made impervious surface coverage of the land in excess of 15 %.¹¹

The Applicant seeks the award of 70.363± acres of IDA growth allocation, representing the area of the Perry Cabin Land located in the Critical Area and classified as RCA.¹² Obtaining growth allocation would allow the Applicant to convert the Critical Area land classification of the Perry Cabin Land located in the Critical Area from RCA to IDA.¹³ The Applicant contends that the award of 70.363± acres of IDA growth allocation is necessary, and would satisfy a prerequisite, to the development of the Perry Cabin Land according to the MP3-150 Plan in the Critical Area.¹⁴

II. LEGAL AND REGULATORY BACKGROUND

The Application must be processed and decided according to governing State and Town laws and regulations. The Maryland Critical Area laws were enacted and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the “Critical Area Commission” or “CAC”) was created in 1984.¹⁵ The Maryland Critical Area regulations were subsequently adopted by the CAC and approved by the State Legislature.¹⁶

⁸ See this Decision, Section II (Legal And Regulatory Background).

⁹ See Code of Maryland Regulations (hereafter “COMAR”) 27.01.02.05 C, (4): “Land within the resource conservation area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. . . .”

¹⁰ See Exhibit 227, the MP3-150 Plan.

¹¹ COMAR 27.01.02.03 (Intensely Developed Areas).

¹² See Exhibit 29, plat titled “Growth Allocation Plat, of part of the lands of Perry Cabin Associates Limited Partnership”, dated December 2003, prepared by McCrone Inc.; and Exhibit 372, Site Statistics, revised January 2006.

¹³ NR § 8-1802 (Definitions; persons covered), (8) “Growth allocation” means the number of acres of land in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local jurisdiction may use to create new intensely developed areas and new limited development areas.

¹⁴ See Exhibit 227, the MP3-150 Plan.

¹⁵ The Chesapeake Bay Critical Area laws are codified in the Maryland Code, Natural Resources Article (hereafter “NR”), Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program).

¹⁶ The Chesapeake Bay Critical Area Regulations, contained in the COMAR, Title 27 (Chesapeake Bay Critical Area Commission), were adopted pursuant to NR § 8-1808 (e) (1), as described in 72 Op. Atty Gen. Md. 14.

The State Critical Area Program is based on the findings and purposes contained in Maryland Code, Natural Resources Article ("NR"), § 8-1801.¹⁷ The Town amended its Comprehensive Plan, its Zoning Ordinance, and its Subdivision Ordinance to comply with the Maryland Critical Area Laws and Regulations (collectively the "State Program").¹⁸ In addition, the Town adopted the Town Critical Area Program¹⁹ as permitted by the State Program.²⁰ The amended Comprehensive Plan,²¹ Zoning Ordinance,²² and Subdivision Ordinance,²³ and the

¹⁷ NR, § 8-1801 (Legislative Findings), states:

(a) The General Assembly finds and declares that:

(1) The Chesapeake Bay and its tributaries are natural resources of great significance to the State and the nation;

(2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats:

(3) The capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited;

(4) National studies have documented that the quality and productivity of the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxics in the Bay System and declines in more protective land uses such as forestland and agricultural land in the Bay region;

(5) Those portions of the Chesapeake Bay and its tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Baltimore-Washington metropolitan corridor;

(6) The quality of life for the citizens of Maryland is enhanced through the restoration of the quality and productivity of the waters of the Chesapeake Bay and its tributaries;

(7) The restoration of the Chesapeake Bay and its tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;

(8) The cumulative impact of current development is inimical to these purposes; and

(9) There is a critical and substantial State interest for the benefit of current and future generations in fostering more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habit.

(b) It is the purpose of the General Assembly in enacting this subtitle:

(1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and

(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

¹⁸ See NR § 8-1808 (Program development, implementation and approval); NR § 8-1809 (Adopting program; periodic reviews; amendment); and COMAR, Title 27 (Chesapeake Bay Critical Area Commission), Subtitle 01 (Criteria For Local Critical Area Program Development), setting forth criteria for the approval of local programs by the Critical Area Commission.

¹⁹ Exhibit 20, St. Michaels Local Critical Area Program (December 1987) (the "Town Critical Area Program").

²⁰ NR § 8-1808 (Program development, implementation and approval); NR § 8-1809 (Adopting program; periodic reviews; amendment); and COMAR, Title 27 (Chesapeake Bay Critical Area Commission), Subtitle 01 (Criteria For Local Critical Area Program Development).

²¹ Exhibit 13, St. Michaels Comprehensive Plan (December, 1998) (the "Comprehensive Plan").

²² Exhibit 373, St. Michaels Ordinance No. 109 (December, 1975), as amended (the "Zoning Ordinance").

²³ Exhibit 19, St. Michaels Ordinance No. 110 (December, 1975), as amended (the "Subdivision Ordinance"). The Subdivision Ordinance was amended by Town Ordinance No. 308 (Exhibit 190), to permit private streets and alleys, and to amend street standards applicable in the Traditional Neighborhood Development Zones to permit open section streets.

Town Critical Area Program, are collectively referred to as the "Town Program". As required,²⁴ the CAC approved the Town Program.

Therefore, the following State and Town laws, regulations, plans, and programs (collectively the "Applicable Laws") are relevant to the process leading to the findings and decision contained herein:

- a. Maryland Code, Natural Resources Article (hereinafter "NR"), Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program) (hereinafter the "Maryland Critical Area Laws");
- b. Code of Maryland Regulations (hereinafter "COMAR"), Title 27 (Chesapeake Bay Critical Area Commission) (hereinafter the "Maryland Critical Area Regulations");
- c. Maryland Code, Article 66B (Land Use);
- d. St. Michaels Comprehensive Plan (December, 1998) (hereinafter the "Comprehensive Plan")²⁵;
- e. St. Michaels Zoning Ordinance (No. 109, December, 1975, as amended) (hereinafter the "Zoning Ordinance")²⁶;
- f. St. Michaels Subdivision Ordinance (No. 110, December, 1975, as amended) (hereinafter the "Subdivision Ordinance")²⁷; and
- g. St. Michaels Local Critical Area Program (December, 1987) (hereinafter the "Town Critical Area Program").²⁸

The Applicable Laws govern development of land located within the Critical Area.²⁹ Growth allocation is a creation of the State Program which allows for a limited amount of new development within the Critical Area classified as RCA at a density in excess of one unit per 20 acres.

Because the award of growth allocation under the Town Program is specific to a concept plan for development of the property that is the subject of an application for growth allocation,³⁰ consideration of the Application necessarily involves consideration of all of the Applicable Laws relating to implementation of the MP3-150 Plan on, and as it relates to, the Perry Cabin Land.³¹

According to the State Program, all land within the Critical Area of the Town (the "Town Critical Area") at the effective date of the State Critical Area Law was considered to be in the

²⁴ NR § 8-1809 (Adopting program; periodic reviews; amendment).

²⁵ Exhibit 13.

²⁶ Exhibit 373.

²⁷ Exhibit 19, as amended by Exhibit 190 to permit private streets and alleys, and to amend street standards applicable in the Traditional Neighborhood Development Zones to permit open section streets.

²⁸ Exhibit 20.

²⁹ NR § 8-1807 (Areas included).

³⁰ See Exhibit 373, Zoning Ordinance, Section 5 (Zone Regulations), Subsection 11 (Growth Allocation District - GA), Part c (Procedures), Subpart 1) (Submission Requirements), Paragraph b), requiring a concept plan.

³¹ See Exhibit 373, Zoning Ordinance, Section 5 (Zone Regulations), Subsection 11 (Growth Allocation District).

