

Hand Delivered

July 28, 2009

QAC Commissioners
107 N. Liberty Street
Centreville, MD 21617

Below are comments from Queen Anne's Conservation Association is submitting to the public hearing record for County Ordinance 09-10. Some of this testimony was prepared in 2005 & 2006 and may not incorporate changes to the new Code syntax necessitated by the recent update to the the Law and conforming COMAR regulations. Please read these remarks accordingly.

▪ Survey and Plat Preparation Recommendations

1. Employ qualified consultants (NOAA, MDE, CAC, specialized surveyors) to create survey protocols for water boundaries and tidal wetland delineations together with a mandatory training program for appropriate County staff and all engineers and surveyors active in County land development projects.
2. Identify consultants to provide “on-call” advice to the Planning Commission and planning staff on these matters.
3. Require that all three significant critical area lines . . . The Mean High Water Line, The Landward Extent of Private Tidal Wetland, and The 1000’ Critical Area Boundary . . . be described by a metes and bounds description that is shown on the boundary survey.
4. Require a that a complete “critical area survey” using the “tidal study method” be prepared and reviewed prior to:
 - a. Submission of a petition for growth allocation;
 - b. Submission of a plat “lifting” a Critical Area development right; or
 - c. Submission of a preliminary Subdivision or final Site Plan application for a parcel in excess of 25 acres or 1500 feet of shoreline.
5. Require a that a complete “critical area survey” using “approximate methods” be prepared and reviewed prior to submission of any other preliminary subdivision or final site plan application.

Growth Allocation

• Overview

The Growth Allocation process is the very important component of the Critical Area law by which local jurisdictions can change the established critical area “zoning” of particular project sites within the jurisdictions critical area.

When the Critical Area law was established in the late 80’s each jurisdiction was given a fixed, one-time “allocation account” that established the number of acres within that jurisdiction that could be rezoned using this technique. Otherwise critical area zoning (except for mistakes or changes in coastal geography) cannot be locally changed.

This process is capable of creating enormous changes in land value for the Queen Anne's County waterfront property. It can be used to allow property that had been limited to 1 house per 20 acres to be developed at far higher densities (50-150 houses on the same 20 acres). Or the same 20 acres, that had been restricted to low density residential and agricultural use, can be converted to intense commercial or institutional use.

This "allocation account" has been entrusted to the County Commissioners to use for the public good, subject to some state criteria and oversight. It is a very valuable "public asset" worth, in aggregate, hundreds of millions of dollars. It should be conserved, used wisely and carefully accounted for.

This has not been the case in Queen Anne's County!

- Policy

This valuable public program clearly should be guided by well crafted community focused public policies. It has not had that to date!

The "allocation account" for Queen Anne's County was established in 1988 at 1,528 acres. It was a one-time allocation and can only be replenished by the state legislature. It appears from this draft document that almost 1000 acres has been awarded with comparatively little public benefit. As noted below this accounting is unreliable. The tabulation suggests that 500+ acres remains. It further indicates that a substantial portion (perhaps as many as 330 acres) has been reserved for Queenstown and Centreville.

If there is only a few hundred acres left under County control, why is it worth the effort to reform the public policies that govern the program? Remarkably, as few as 200 acres is worth in excess of 20 million dollars.

There should be a moratorium on further growth allocation until policies to assure that the public will recover the value all future growth allocation awards are in place. Appropriate policies might include a combination of direct compensation by project developers, by policies that give priority to community benefiting and tax positive developments, and by requiring that several agricultural and critical area development rights be purchased for each acre of residential growth allocation awarded.

- Accounting

The current County Accounting is a totally inadequate accounting of this valuable public asset.

The information presented is insufficient to determine where and when and to what project and parcel prior allocations were made. The appendix does not correctly show the resultant changes to the total critical area and does not indicate reliably the remaining allocation acreage. The terms "Growth Management Pool, Pre-Mapped, and General Pool" are confusing.

The stockholders of a publicly owned company with multi-million dollar assets would never stand for or be asked to stand for such inadequate accounting. The taxpayers of Queen Anne's County should not either!

- Recapture

It is generally understood that each award of QAC Growth Allocation has been made and will be made to permit construction of a “project” that the Commissioners had determined was a “public benefit.” In a few words, QAC Growth Allocation is “project specific” and on a “case-by-case” basis.

Yet, several hundred acres of this precious resource have been awarded to projects that have never and probably will never be built. The County has turned a blind-eye to the need to recapture these unused assets, preferring instead to allow favored landowners to “bank” this windfall. This practice should stop!

The possible recapture of the remaining allocation “set-aside” for Queenstown and Centreville, noted on page 24, should be clarified as new community plans are developed for these growth areas.

- Mapping

In Queen Anne’s County zoning for a critical area parcel is effectuated by combining applicable criteria for the critical area “overlay” zone (IDA, LDA, or RCA), shown on a transparent overlay map, with criteria for the parcel’s corresponding conventional “underlay” zone, shown on a paper underlay map. In the QAC critical area neither the overlay nor the underlay tells the whole story. (Note: most other jurisdictions that don’t use this overlay system within their critical area).

This leads to much confusion and a cartographer’s nightmare. Registration and interpretation of the underlay with the overlay is difficult. Each is based upon different and not very precise original source maps.

These difficulties can usually be overcome when growth allocation involves the entire parcel, but becomes highly problematic when only a portion of the parcel is within the critical area, and even more difficult when only a portion of the parcel’s critical area requires growth allocation.

A high quality and complete boundary survey and metes and bounds data for all critical area and development area lines will overcome these difficulties. The cost of mistakes and disputes far outweighs the small additional surveying cost required.

- Survey Requirement

Current Chapter 18 and Chapter 14 survey requirements are inadequate because they fail to require that a growth allocation petition be based upon a complete boundary and critical area survey and because they don’t require a metes and bounds description for critical lines and growth allocation zones.

- Recommendations

1. Require the Planning Department to prepare a complete and accurate inventory and mapping of all Growth Allocation awarded to date.
2. Appoint an independent accounting/planning firm to prepare a thorough and audited accounting of the County’s Growth Allocation account.
3. Establish a policy that all Growth Allocation Petitions must be based upon an approved “critical area” property survey. The mean high water line for this survey must be determined using the “tidal study method.”

4. Require that Growth Allocation that is to be awarded to less than the entire development parcel be described by and computed based upon a complete metes and bounds description related to the “critical area” property survey.
5. Require that growth allocation plans indicate the proposed existing or proposed amended “development area” classification (IDA, LDA, RCA) for all of the critical area land on the “subject property” including private tidal wetlands.
6. Clarify the County’s intentions, policy and procedures regarding recapture of municipal Growth Allocation “set aside” discussed on page 24 of the Planning Commission Draft.
7. Require that 60% of the County’s remaining Growth Allocation be reserved for tax positive non-residential projects whose sponsors agree to compensate the County \$100,000 for each acre awarded.
8. Require that other remaining Growth Allocation be not be used for residential projects unless the sponsors agree purchase 1 Critical Area development right or 5 AG development rights for each acre awarded.
9. Require that all past Growth Allocation obtained more than four years ago be recaptured and un-mapped unless final subdivision and/or site plan approvals have been obtained for the originally intended project. Require that future Growth Allocation be recaptured and un-mapped four years from the date of award unless final subdivision and/or site plan approvals have been obtained for the originally intended project.

Critical Area TDR Program

This program, like the NCD program, has no designated sending or receiving areas. A development right can “sent” from anywhere in the RCA and “received” anywhere in the RCA. It has no requirement that the sending parcel be developable. This has permitted the transfer of “development rights” from sites composed exclusively of tidal wetland.

Much of these tidal wetlands may have been below the mean high water line. That portion of the property belonged to the State of Maryland. But, coupled with abuses of water boundaries surveying procedures noted above, this program has been effectively used by some development interests to “make silk purses out of sows ears.”

The Critical Area TRD program does not accomplish the purpose set forth in Article 66B authorizing the establishment of programs for the transfer of development rights §11.01:

“ . . . To encourage the preservation of natural resources and to facilitate orderly growth and development in the State . . . ”

The TRD program should be reformed to create designated sending and receiving areas. It should prohibit the “sending area” abuses suggested above. To accomplish the purposes established by the State, receiving areas should be identified out of the critical area and/or within growth area and growth allocation parcels.

I appreciate this opportunity to comment and look forward to your serious consideration of these observations and suggestions.

Sincerely,
for Queen Anne's Conservation Association

Richard S. Altman
Executive Director