"Federation Corner" column
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M-NCPPC: an ineffective bureaucracy by choice?
by Wayne Goldstein

Within the past week, I have seen the Maryland-National Capital Park and Planning Commission (M-NCPPC) at its most and least effective. I had the opportunity to make recommendations to the Planning Board and its staff of changes to its Development Review Manual, and while I was pleased to be heard, I was more pleased to see that all involved wanted to solve a number of persistent problems related to the quality of plans, the qualifications and certifications of those who submitted the plans, and how to require accountability for inaccurate plans.

Unfortunately, the application of these important principles of transparency and accountability is apparently intended for the future, not the present. This became obvious this week when I learned of a proposed plan for swift and decisive action by M-NCPPC officials that would make it appear that an agency known for its bureaucratic inefficiencies was suddenly being run by a General Patton.

Readers may recall columns written (May 11, 2006 and October 26, 2006) that detail the tragedy of errors inflicted on Ashton resident Steve Kanstoroom by an M-NCPPC and other agencies either befuddled, paralyzed by indecision, or seemingly sinister in their actions. Kanstoroom has struggled for more than 15 months to get M-NCPPC to require the reforestation of a clearing created by a neighbor's violation of the county's Forest Conservation Law (FCL). After the inexplicable decision to only require the planting of 25 trees to deal with the unlawful clearing of no less than 12,000 square feet and perhaps as much as 22,000 square feet of forest, the violator was recently allowed to plant all of the trees in existing forest, even 2 feet from existing trees, rather than in the "hole" in the forest created by the unlawful clearing. Several affidavits, dating back to December 2005, alleging collusion between the owner and an M-NCPPC inspector to initially conceal this FCL violation, have yet to be responded to by M-NCPPC.

Kanstoroom also stopped the nine-year-long illegal dumping of thousands of cubic yards of brush, logs and other organic matter on a PEPCO transmission line right-of-way adjacent to his property. Other county and state agencies vied with each other to be the most befuddled, paralyzed by indecision, or seemingly sinister in trying to decide what to do about the dump. In a battle of the experts, some state and county government officials claim that this illegal dump, several hundred feet from the Patuxent River, which supplies drinking water to residents of Montgomery and Prince George's Counties, is a five-foot deep compost pile that is harmlessly breaking down into rich topsoil. Others claim that this could be a 20-foot deep debris pile that could contain toxic materials.

National experts have opined that a large and deep dump could be a fire hazard due to the potential for spontaneous combustion for years to come caused by high temperatures inside the pile and that toxic materials could end up in the adjacent river. At this time, no action is planned, based on the observed contents of the dump and the claim that removing the dump would cause more environmental damage from erosion and from transporting the debris off site than leaving it in place. There may be future unspecified monitoring of the dump. Needless to say, Kanstoroom worries that if a dump fire erupted, it could spread to his property, and toxic chemicals might contaminate ground water.

Since last fall, Kanstoroom has also been fighting with M-NCPPC to stop the development of an adjacent 27-acre parcel, because initial plans did not show private easements that he has on the property, nor sensitive environmental features that could also limit development. Unknown to Mr. Kanstoroom, the late husband of the current owner voluntarily offered this parcel for the Legacy Open Space (LOS) program in 1998, submitting detailed plans that showed the correct boundaries of Kanstoroom's private easements as well as

many sensitive environmental features such as headwaters of a stream, steep slopes and numerous specimen trees. While LOS rejected the parcel, in large part because it was not contiguous to parkland, the easement boundaries and environmental features of the parcel were then well known. When other family members later sought to develop this property, parts of the easements and a number of the previously identified environmental features were not included on the new plans. I helped "rediscover" the LOS application and related plans, which M-NCPPC did not know it had in its possession.

This parcel might yield as few as two but no more than five buildable lots under the most generous interpretation of the zoning code. Kanstoroom is concerned that forest adjacent to and perhaps on his property will be unnecessarily damaged because his private easements and the environmental constraints will greatly restrict what can be built on this property. If a full-size front-end loader drives through this roadless forest and digs at sites seeking the locations for five septic systems, yet only two could ultimately be approved, it will take decades for the forest to recover from such avoidable damage.

It appears that a lethargic M-NCPPC has been energized by a March 23rd letter from the property owner's attorneys stating that the owner is in compliance with all relevant laws and regulations and that time is of the essence to meet a looming cutoff date of April 15th to do the high water table testing related to the location of the septic systems. If the deadline is not met, the owner would have to wait until early 2008 to take this first step to determining this aspect of the development potential of the parcel.

Kanstoroom contends that IF the applicant had submitted accurate plans in the original application last fall, perhaps even resubmitting the 1998 LOS-related documents, including an accurate depiction of the private easements and an accurate Natural Resources Inventory/Forest Stand Delineation (NRI/FSD), it would had been verified and approved by M-NCPPC Environmental Planning Staff by now. Then, Kanstoroom contends, it would be apparent that fewer sites had development potential so that less forest and ground disturbance would be necessary to do the testing. Thus, the applicant's inaccurate submissions are at the heart of the current predicament.

In response to this letter, new M-NCPPC acting Planning Director Gwen Wright proposes an ad hoc procedure to swiftly allow the timely testing by quickly identifying and protecting environmental features in the vicinity of the travel and testing areas, but not require an accurate, corrected NRI/FSD until a preliminary plan for the property is submitted. Whether or not the attorneys' interpretations of relevant laws and regulations are correct, what is clear is that M-NCPPC can move very fast when it wants to, perhaps resolving this issue to the benefit of the property owner in less than two weeks. If it had taken the same efficient, expedited, approach in examining and resolving Kanstoroom's initial claims in December 2005, equitable solutions could have been reached by January 2006. Instead, the swift response of M-NCPPC to this letter from an applicant for its approvals underscores the disparate treatment that M-NCPPC currently gives to different people.