

1 September 9, 2016



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3 **Talbot County Planning Commission**
4 **Final Decision Summary**

5 Wednesday, August 3, 2016 at 9:00 a.m.

6 Bradley Meeting Room

7 11 N. Washington Street, Easton, Maryland

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9 **Attendance:**

10 Commission Members:

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- 12 William Boicourt, Chairman
- 13 John N. Fischer, Jr., Vice Chairman
- 14 Michael Sullivan
- 15 Paul Spies
- 16 Phillip “Chip” Councill
- 17

18 Staff:

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- 20 Mary Kay Verdery, Planning Officer
- 21 Jeremy Rothwell, Planner I
- 22 Meagan Patrick, Flood Plain Coordinator
- 23 Carole Sellman, Recording Secretary
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- 25
- 26

27 **1. Call to Order**—Commissioner Boicourt called the meeting to order at 9:00 a.m.

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29 Ms. Verdery introduced the new staff member Meagan Patrick, Floodplain Management
30 Coordinator. Ms. Patrick provided the Commission with a short synopsis of her
31 background.

32
33 **2. Decision Summary Review**—July 6, 2016

34
35 The Commission reviewed the July 6, 2016 Draft Decision Summary.

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37 **Commissioner Sullivan moved to approve the draft Planning Commission**
38 **Decision Summary for July 6, 2016, as presented with no additions or**
39 **corrections; Commissioner Fischer seconded the motion. The motion carried**
40 **unanimously.**

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42 **3. Old Business**—None.

43
44 **4. New Business**

45
46 a. Text Amendment to Chapter 190, Golf Course Driving Range

47
48 Ms. Verdery presented a memorandum to the Commission that outlined the
49 request from the applicant. Included was information required by the Critical Area
50 Commission in the Resource Conservation Area (RCA). In addition standards
51 such as a 300 foot setback from tidal wetlands and a 150 foot setback from
52 tributary streams were proposed. Ms. Verdery also presented the Commission
53 with an alternative to what was presented by the applicant. The applicant is
54 proposing to create a new land use category. Within the Critical Area, the

55 property would be considered a driving range while in the Non-Critical Western
56 Rural Conservation (WRC) Area where golf courses are permitted, it would be
57 considered a golf course. The applicants proposal would split this one area into
58 two different land use categories. Ms. Verdery stated that she had a conversation
59 with the Critical Area Commission staff in regard to the legal nonconforming
60 status of the golf Course in the RCA and asked if we could amend our Ordinance,
61 which currently limits to a ten percent (10%) expansion of a nonconforming use,
62 to allow a twenty percent (20%) expansion, just for a golf course use. Critical
63 Area staff preferred this option. This puts a cap of 20% expansion of the total in-
64 play area of the course that existed in 1989. Ms. Verdery stated that Mr. Stagg is
65 here and has run some numbers on how that would fit and if the expansion
66 proposed at Harbourtowne could comply.
67

68 Mr. Bill Stagg of Lane Engineering, and Zach Smith of Armistead, Lee, Rust and
69 Wright, appeared on behalf of the Harbourtowne Golf Course. Mr. Smith stated
70 they were before the Commission for a proposed text amendment and seeking a
71 recommendation from the Commission to the County Council on the text
72 amendment. He wanted to give a current status of Harbourtowne. Last year they
73 were before the Commission in regards to the Sustainable Tourism and
74 Redevelopment (STAR) Legislation. The Commission recommended, and the
75 County Council voted, to enact the STAR legislation. Once the legislation was
76 enacted the owner began to work with the architect to come up with an
77 appropriate design, within a reasonable construction budget. Mr. Smith stated
78 they anticipate at some point in the future coming before the Commission with a
79 plan to redevelop the hotel site and create a new golf course club house.
80

81 There has been a lot of progress on the golf course. There has been a tremendous
82 amount of dirt moved to shape the renovated golf course. They are a little behind
83 schedule due to unavoidable weather delays. He stated that they had hoped to
84 have the golf course opened and fully operational by 2017, but it is clear that
85 won't happen so they are now hoping it will open by 2018. The neighbors want to
86 see it opened as soon as possible, as does the owner.
87

88 As part of the renovations, the owner wants to relocate the driving range. The
89 former driving range was too short. The length of the driving range was
90 inadequate for today's golfers. It created a situation where occasionally balls
91 traveled beyond the range onto the road and adjoining property. As part of the
92 renovation, the owner wanted to resolve that issue. He stated they looked at
93 several solutions. One option was to place a large net, the owner quickly
94 dismissed that idea as it is out of character with the Martingham community and
95 the first class golf course he is trying to create. In the interim, the golf course
96 design team said they really needed more room to enhance holes 1 and 18 which
97 are in that area. It became apparent they really needed to move the driving range.
98 There was no alternative location. They began to look beyond Harbourtowne and
99 just north there is a 20 acre piece of property for sale. The property is improved
100 by a residence located near the water's edge. The majority of the property is an

101 open field. The property is the former location of an outfall point for the
102 Martingham wastewater treatment plant. That activity ceased there around 2008.
103 The County is in the process of connecting Martingham to the St. Michaels
104 wastewater treatment plant. This property is available and underutilized. The only
105 problem is the property is partially located within the Rural Conservation (RC)
106 zone and within the County Zoning Ordinance, neither golf courses nor driving
107 ranges are not allowed in the RC zone. Mr. Smith stated the current owner of the
108 property tasked them with proposing a zoning ordinance text amendment to the
109 County to allow a driving range. He stated the prohibition goes back to around
110 1989, the time the County adopted its local Critical Area Program, and there was
111 some uncertainty about the appropriateness of golf courses in the RC zone.
112 Certain golf courses already existed, like Harbourtowne, and they were
113 grandfathered in. Since that time the Critical Area has warmed to the idea of
114 having golf courses and associated driving ranges in the RC, if they elect to do so.
115 Other jurisdictions have done so. Mr. Smith said they put together an amendment,
116 worked with the County staff and the Critical Area staff to review. The County
117 Council sponsored the legislation. On Monday a meeting was hosted with the
118 Martingham community as well as citizens who lived off of Melanie Drive, the
119 roadway just north of the subject property, to respond to any questions or
120 concerns. The meeting was well attended. The main questions were about the
121 private driveway for the new property and if it would cause additional traffic on
122 that roadway. There is no intention of accessing the driving range from that
123 driveway. Golfers would access the range from the golf course. The only vehicles
124 that would access the range are golf carts, maintenance equipment, mowers and
125 ball collection equipment which would access the range from Canvasback Way.
126 Other concerns we heard were about lighting, and there are no plans to light the
127 driving range. There was some discussion about buffering. There is currently a
128 buffer along Melanie Drive. Owner is willing to work with the neighbors and beef
129 that up. Mr. Smith stated they feel there is no adverse impact to surrounding
130 properties. They ask the Planning Commission for a favorable recommendation.

131
132 Commissioner Fischer asked the applicant about their feelings about the changes
133 requested by the Planning Officer. Mr. Smith stated they have no objection to the
134 alternative. They would prefer, if the alternative is adopted, that discretion to
135 approve be given by the Planning Officer, instead of going to the Board of
136 Appeals. Mr. Rothwell stated that, prior to 1989, the golf course was a special
137 exception, so an expansion of that golf course would have to go to the Board of
138 Appeals.

139
140 Mr. Smith stated the Planning Officer has the discretion to send the request for an
141 expansion to the Board of Appeals. But when she or her successor is comfortable
142 they don't feel the need for that additional step in the process. Mr. Rothwell felt
143 that being able to expand the golf course by twenty percent (20%) provides the
144 applicant with more flexibility. The design of a golf course has a shelf life. Over
145 time it has to be redesigned and reconfigured. In ten or twenty years that may well
146 not be the driving range, so you're creating an inconsistency that will have to be

147 rectified at a later date. Mr. Smith stated they did not object to the process, it is
148 just that the administrative approval of that, they feel it is more appropriate to
149 have some authority of the Planning Officer to approve such expansions when he
150 or she deems appropriate, rather than automatically having to go to the Board of
151 Appeals.

152
153 Commissioner Boicourt stated he feels pretty comfortable with this application.
154 But we are proud in this County for not equating open space with working land.
155 There was a proposal for a hunting club and golf course in the southeast part of
156 County where people came into a shared house and all the clothing and art work
157 would be there for them when they arrived. The consensus was this was not
158 appropriate for us. Part of it was some of these same issues. These are appropriate
159 flexibility additions to the process especially in light of this particular project. He
160 would be in support of keeping the appeal to the Board of Appeals. This is a big
161 project, it has implications, he is very comfortable with the protections imposed
162 by the staff.

163
164 Mr. Smith understands those concerns and they are grateful for the process and
165 they are willing to go before the Board of Appeals to get there.

166
167 Commissioner Boicourt asked for public comments; none were made.

168
169 Commissioner Sullivan asked if they could meld the two options? Ms. Verdery
170 stated there was one text amendment labeled No. 1 which is just for the driving
171 range. Then there is No. 2 which is the alternative which is the golf course
172 expansion.

173
174 **Commissioner Fischer moved to recommend to the County Council to**
175 **approve the alternative Text Amendment as proposed by Staff in the draft**
176 **bill; Commissioner Spies seconded the motion. The motion carried**
177 **unanimously.**

178 179 **5. Discussions Items**

- 180 a. Shore Real Estate Investment, LLC-Proposed cottage industry excavating
181 business – this project was requested to be postponed to a later meeting

182 183 **6. Staff Matters**

- 184 a. Solar Array

185
186 Mr. Rothwell stated there have been five meetings. The next meeting is Thursday,
187 August 4th from 5:00-7:00 p.m., Conference Room 1, 215 Bay Street. The initial
188 meeting was an introduction meeting. At the next meeting, Susan Gray from the
189 Research Unit of the Department of Natural Resources gave a talk about how
190 solar energy is regulated and how it is truly an interstate approval process. She
191 provided a lot of great information on how projects were reviewed and how they
192 were mitigated. There is no shortage of questions as to what we can and cannot

193 mitigate. The Maryland Association of Counties is putting together their own
194 workgroup and will be putting together some legislation for the upcoming general
195 assembly session. As it stands now, the Power Plant Research Unit is responsible
196 for providing the independent third party technical review and recommendations
197 for mitigation to the Public Service Commission. Their scope is fairly narrow,
198 they look at things like environmental impacts. It is not in their scope of practice
199 to consider loss of farmland or, is it consistent with the County Comprehensive
200 Plan.

201
202 Mr. Rothwell stated that yesterday they were supposed to have Dana Sleeper,
203 MD/VA/DC Solar Energy Industries Association, she could not make it because
204 her car broke down and will be there next Thursday. He said they did have Mike
205 Gosnell who is a solar energy developer. He gave a brief talk about what they
206 look for in terms of acquiring and leasing properties. We have had very good
207 meetings and good discussions. It has been good to have Cory Buxton, an
208 electrical engineer, who serves on the Public Works Advisory Board. He runs the
209 distribution side of Delmarva Power. Also having Jeff Rathell who many of you
210 know as a farmer, but is also the Vice President of Choptank Electric. Mr.
211 Rothwell passed out a working draft of what was discussed at yesterday's
212 meeting. There will be two or three more meetings talking about the draft before
213 the text amendment is written. They are looking to have three differentiations,
214 small, medium and large scale. The small scale would require a building permit.
215 The medium scale would be like the Shortall which came before you a couple of
216 months ago, something in the five to ten acre range. The last would be the large
217 scale, converting entire farms. The way the law stands now we do not have the
218 ability to deny it outright but we have the ability to mitigate it and to channel it
219 where appropriate. What we are looking at using is the requiring of 1:1 or 2:1
220 mitigation. If you were to locate a solar facility in an area which is already zoned
221 for commercial or industrial development or Town Conservation (we try to
222 identify those as where we most want to see solar) it would be a 1:1 mitigation. If
223 located within the Agricultural Conservation/Rural Conservation/Western Rural
224 Conservation (AC/RC/WRC) 2:1 mitigation then a priority preservation area. The
225 landowner would have the ability to donate a conservation easement on other
226 acres or on another farm so they do not have to pay. They can also do a fee in lieu
227 of in a 1:1 or a 2:1 basis. Mr. Rothwell stated they are trying to put in screening
228 requirements so not to be too onerous. He hopes they will have something by the
229 October Planning Commission meeting.

230
231 Commissioner Cancell stated it was a classic example of the more you think you
232 know the more you don't know. He feels at the end of the day the process will
233 work.

234
235 Commissioner Boicourt stated he read the planning document that was sent out. It
236 was a good document but did not really address the issues that were appropriate
237 here. It started out with farmland and the document does not really address that.
238 The document was more of an urban focused document.

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Commissioner Spies stated there was a meeting in Kent County. Some of their mitigation rates were tied to soil quality. Lower quality soils are mitigated at a lower rate and better soils at a higher rate. That may be a little more difficult to manage. In his location there are a lot of nicer farms that are not in the Priority Preservation Area.

Mr. Rothwell stated the good thing from a legal view is tying into the priority preservation area. Priority Preservation Area is in COMAR, it is required by every County, and every County has a one. By tying specifically to something that is required to be put in the Comprehensive Plan, we have standing if it is legally challenged. Ms. Verdery stated that the difficulty with the soils is that the soils do not follow the farm boundaries. Commissioner Councill stated there is a computer program that he can give a breakdown of soil classification of any parcel within five minutes. Ms. Verdery stated that not all of the soil classifications of that single parcel would be the same. Commissioner Councill said that the Land Preservation does a breakdown. Commissioner Spies stated that there is no easy answer. Commissioner Sullivan stated we don't want to get too technical. He said what really struck him was, what is going to happen if we have our best farmland turned into solar? Commissioner Spies said if you use the Priority Preservation Area then not only is it not valuable to put solar on but you put the mitigation in the Priority Preservation Area.

Mr. Rothwell stated most of the calls from developers and interested landowners come from the Cordova area. Commissioner Spies stated that was due to the power line there. Ms. Verdery stated maybe we could work backward and give a credit to take out less valuable land, rather than the more valuable land.

Commissioner Councill asked if every farm could be ranked in the Land Preservation Program on a scale from 1 to about the largest we had was 380-390s. If a farm rates from 1-100 it is less desirable and rates 1:1, if it is 100-200 it is 2:1, anything in the top tier would be most valuable at a 3:1 mitigation. Commissioner Boicourt stated that is a good idea. Commissioner Councill stated it uses soil quality, conservation practices, size of farm. Mr. Rothwell stated the basic crux of that program could be run for each project. But it has to be run on a property by property basis. Commissioner Councill stated he can run any farm in the County in 15 minutes within 10-15 points. He asked if they still have to abide by County setbacks? Mr. Rothwell stated every use has to abide by basic setbacks for the underlying Zoning District. Some uses require additional setbacks, cottage industries for instance require 150 foot setback from all property lines, 200 foot setback from neighboring residences. He stated they discussed that at the meeting yesterday and it was questioned if there should be an additional setback, in the zoning district where 50 feet is the standard. Commissioner Spies asked what the setback from neighboring residences was. Mr. Rothwell said there was no requirement from neighboring residences, it was 50 feet from property line. Ms. Verdery said there would be a screening requirement also, so there would be some

285 type of buffer. Commissioner Councill stated a poultry house has an increased
286 buffer. If he had a neighboring piece of property 50 feet is not enough, but he
287 would still stand by this is not an agricultural use. For example the booms on his
288 sprayer are 90 feet. If you increase the setback to 300 feet, someone will till 300
289 feet. If you make the setback enough, someone will till it. Mr. Rothwell stated the
290 only difference with this and poultry houses is the odor and dust.

291
292 Commissioner Fischer asked Mr. Rothwell to clarify leasing and acquiring, he
293 wanted to know if properties were being acquired. Mr. Rothwell stated that was
294 one of the business models. It depends on the size and scale of the property. For a
295 five acre project like the Shortall property they would lease the property. In many
296 cases they purchase the property outright. They claim they are not doing much
297 disturbance and you are going to be able to return to agriculture in thirty years.
298 Mr. Rothwell stated he did not feel the demand for electricity was going to go
299 down. Commissioner Councill disagreed because he felt technology was going to
300 change in twenty years. Whether these sites will still be feasible for something
301 leads to another question. The MALPF program goes in cycles, right now they are
302 in two year cycles. He wondered if it would be more appropriate to do it in two
303 year cycles. Mr. Rothwell stated that you want to try to avoid too much lag time,
304 higher or lower. Commissioner Councill suggested using five years and/or three
305 cycles, whichever is less. Mr. Rothwell stated if they were going to use an
306 average he wanted to try to get a decent sample size because every property is
307 different.

308
309 Commissioner Councill asked if a property owner wanted a change of zoning,
310 what does the Ordinance say? Could they come back and argue the character of
311 their parcel has changed? Mr. Rothwell stated that is partially a legal question.
312 The short answer is that the Comprehensive Plan just adopted has a Land Use
313 Map and that Land Use Map has legal standing in the Court system. If that
314 property or that area is not designated for commercial use that is the fundamental
315 factor to be considered by the Commission and County Council when doing a
316 rezoning.

317
318 Mr. Rothwell said that Amy Mordoch from Kent County will be coming to speak
319 at the meeting on the 23rd of August. He stated one thing we should consider is
320 what Kent County did was to put in the 1% maximum on the acreage of
321 agriculturally zoned land for solar. Commissioner Fischer asked if that would be
322 sustainable? Commissioner Boicourt stated that is why we want to pay close
323 attention to those counties. Mr. Rothwell noted that we have to remember there is
324 a difference between agricultural land and agriculturally zoned land.
325 Commissioner Councill stated if you include woodland, tillable land he would
326 agree.

327
328 Commissioner Fischer stated MACO is working on their own legislation and they
329 are going to be behind us. Mr. Rothwell said they have 24 jurisdictions including
330 the City of Baltimore. They have to try to find a path to rectify competing state

331 interests. Commissioner Boicourt stated the big thing is an organization like that
332 has communication among the counties and can bring that before us.
333 Commissioner Spies asked if there would be an assessment and tax rate change?
334 Mr. Rothwell stated there was a request sent to Assessments and Taxation who
335 sent it to their Legal Counsel in Annapolis. A decision was made that the
336 agricultural assessment would be lost and transfer tax would have to be paid. The
337 assessed value will change from an assessed value of approximately \$500 to
338 \$2,000 an acre to around \$20,000 an acre. Commissioner Spies asked who would
339 pay that fee? Mr. Rothwell said that would depend on the contract. There would
340 be a clause in the contract that would determine that, usually the lessee will pay.

341
342 Commissioner Fischer asked if a farmer is going to put 100-150 acre solar array
343 on his property is he going to get out of farming? Commissioner Cuncell said in
344 the big picture you have to look at farm ownership. Is it an absentee landowner
345 that the farm was inherited where there is a number of trustees or landowners and
346 they literally have no interest. If they are getting \$150 an acre for land and they
347 look at this and here is a chance to get \$1,200 to \$2,000 an acre. In the alternative
348 the solar company could buy that farm for \$8,000 an acre. Commissioner Spies
349 stated his fear of it is not only do the number of acres of agriculture go down, but
350 we are also going to lose farmers.

351
352 Mr. Rothwell is going to the Farm Bureau for their Board Meeting on the third
353 Wednesday of August. The County has some options for mitigation. The County
354 can do a direction match with MALPF. MALPF is a good program, but it is a
355 cumbersome process. The County can do it quicker and protect more land. The
356 County has more control over how the money is spent.

357
358 Commissioner Fischer asked when the Moratorium ended. Mr. Rothwell stated
359 around the 1st of January. He explained they hoped to have a draft in front of the
360 Planning Commission in October.

361
362 Commissioner Sullivan asked are there any rough rules about the maximum to
363 produce on acreage? Mr. Rothwell stated that is an engineering question. You
364 have fixed systems that face south. Then you have systems which rotate and they
365 are more efficient on a per acre basis. Commissioner Sullivan stated we need to
366 think about the large size of ten acres, instead of saying the large scale is 50 acres
367 or more.

368
369 b. Ms. Verdery stated that next month there will be a couple of additional text
370 amendment items. The Council is going to introduce legislation known as the
371 Identical Density Legislation. Under the Rural Conservation/Rural
372 Residential/Town Conservation (RC/RR/TC) zoning districts we currently have
373 N/A for density and minimum lot size so people anticipate those zoning districts
374 to have or be served by septic. But as you know in the Comprehensive Plan we
375 identified some areas as Tier III-C with the opportunity that they were not
376 planned but eligible for sewer. As Ray Clarke moves forward with some of his

377 comprehensive water and sewer plan amendments they potentially want to extend
378 sewer to some of these developed areas that are RR zoning and some of these
379 other districts that have an N/A for their lot size and density, so we are making it
380 identical to what would be with or without sewer, but we need to put something
381 there.

382
383 c. Next is a parent parcel, Ryan Showalter is moving forward with independent
384 legislation for a parcel in the RCA which has an existing dwelling that is already
385 within the 200 foot buffer to maintain a 100 foot buffer in hopes of creating less
386 nonconforming situations. All other new lots that are created would have the 200
387 foot Shoreline Development Buffer.

388
389 d. Commissioner Boicourt stated the other aspect is the modified planting area, the
390 view shed. Is there a move to address this topic? Ms. Verdery stated that on
391 August 4th the bids will be opened for the consultant to begin the Zoning Code
392 update. They will then select a consultant. This will not be a re-write, but it will
393 be a significant update. But it will be a redline, strikeout that we can all follow the
394 changes.

395
396 e. Ms. Verdery stated on next month's agenda there will be a request for the five
397 year hold on Annexation for four properties in the Easton area. This is going to
398 Town Council in Easton so we will need to make recommendation. Ms. Verdery
399 stated she will try to prepare a comprehensive comparison between our land use
400 and their proposed use.

401
402 f. Ms. Verdery stated that the Comprehensive Plan will become effective on August
403 6th. The Plan was sent to a consultant for some administrative work. It was
404 returned but was not in the shape expected. The last few days were spent getting it
405 in order. We will definitely have it posted online before the 6th and will have
406 copies in our office and in the library, but will not have all of the hard copies
407 available before the 6th. Commissioner Boicourt stated that is exciting.

408
409 g. Commissioner Boicourt wanted to remind the Commission that we will not be in
410 the Bradley meeting room. Ms. Verdery stated from September through the end of
411 the year we will be at the Wye Oak Room at the Community Center.

412
413 **7. WorkSessions**

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415 **8. Commission Matters**

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417 **9. Adjournment**—Commissioner Boicourt adjourned the meeting at 10:17 a.m.

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