

1 June 29, 2016



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

6 Wednesday, April 6, 2016 at 9:00 a.m.

7 Bradley Meeting Room

8 11 N. Washington Street, Easton, Maryland

9 **Attendance:**

10 Commission Members:

11
12 William Boicourt, Chairman
13 John N. Fischer, Jr., Vice Chairman
14 Michael Sullivan
15 Paul Spies
16 Phillip "Chip" Councill

18 Staff:

19
20 Jeremy Rothwell, Planner I
21 Martin Sokolich, Senior Planner
22 Carole Sellman, Recording Secretary
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- 26 **1. Call to Order**—Commissioner Boicourt called the meeting to order at 9:00 a.m.
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28 **2. Decision Summary Review**—March 2, 2016—The Commission noted the following
29 corrections to the draft decision summary:
30 a. Line 73, correct to read: "not directed at the real estate agent, it was directed at the
31 applicant as he should have known."
32 b. Line 85, correct to read: "Commissioner Sullivan stated the issue was still that he
33 was referring to land use issues which is in the purview of land use staff."
34 c. Line 88, corrected to read: "When the Commission has issues that they are not
35 sure of they rely on staff to look it up."
36 d. Line 97, correct to read: correct word from "brought" to "bought".
37 e. Line 174, correct to read: "raising the house and adjusting the pitch of the roof."
38 f. Line 194, insert flooding so that it reads: "Commissioner Fischer asked if there
39 were any flooding problems in the last ten days."
40 g. Line 240, correct to read: "In 1993, when the applicants first signed the lease with
41 Mr. Taylor, who owned this property, they obtained a special exception from the
42 Board of Appeals to establish flammable liquid and wholesale storage.
43 h. Line 293, correct to read: "Mr. Patrick stated the need to go green has been a
44 Sharp push."
45 i. Line 295, Capitalize DART.
46 j. Line 307, correct to read: Commissioner Fischer asked if this site is similar to
47 other Sharp Energy sites in Pennsylvania and Virginia.
48 k. Line 315, replace question mark with a period.
49 l. Line 441, corrected to read: "Commissioner Fischer stated we need to move on
50 from there to the County Code."
51 m. Line 472, correct to read: "Commissioner Sullivan stated, along the lines of cell
52 towers, that looking into the future everyone wants the service but nobody wants
53 the towers.

- 54 n. Line 474, remove very so that it reads: “This is not particularly new but it has
55 environmental considerations long term as far as this plan is concerned.”
56 o. Line 475-476, correct to read: “He stated that we have to think very carefully
57 about not putting ourselves in the box that we have created with the cell phone
58 towers where we want the service but not the cell phone towers.”
59 p. Line 520, remove mix so that it reads: “Commissioner Sullivan stated the ability
60 to move the vegetation back and make it a little high would alleviate a lot of the
61 issue here.”
62 q. Line 540, correct to read: “Commissioner Fischer voted to deny the application.”
63 r. Line 564, correct to read: “Commissioner Fischer voted to deny the application.”
64 s. Line 772, insert: “Commissioner Fischer stated that he too appreciates the value
65 in preserving water views but there also is virtue in grand avenues of trees such as
66 those that grace the entrance to this farm and many others in the County.”
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68 **Commissioner Councill moved to approve the draft Planning Commission**
69 **Decision Summary for March 2, 2016, as amended; Commissioner Fischer**
70 **seconded the motion. The motion carried unanimously.**
71

72 **3. Old Business**—None.
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74 **4. New Business**
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- 76 a. Edwin F. Hale, Sr. #S1066—26035 Marengo Road, Easton, MD 21601 (map 24,
77 grid 8, parcel 6, zoned Rural Conservation/Western Rural Conservation), Sean
78 Callahan, Lane Engineering, LLC, Agent.
79

80 Mr. Rothwell presented the Staff Report for a single lot subdivision and major
81 revision plat for preliminary approval. This is a one hundred sixty acre farm down
82 Marengo Road. Mr. Hale constructed a main dwelling near the road and a
83 driveway down to the water. In 2002 Mr. Hale recorded a single lot subdivision.
84 He kept the farmhouse and converted one of the existing barns to a guest house.
85 There are currently no provisions for farm employee dwellings in the critical area.
86 The applicant constructed an eight acre lot around the old farmstead to keep the
87 two existing buildings with the large house. He was required to provide twelve
88 acres under a reservation of development rights agreement. The reason this is
89 coming before the Commission is that any time an applicant proposes to relocate
90 a reservation of development rights area it must come before the Planning
91 Commission.
92

93 The applicant proposes to create a pipe stem lot off the private road, down the
94 edge of the property line. There is an existing farm road that would be upgraded
95 to a driveway. The building pad is less than two acres in size. The 1.1 acre of
96 reserved land area would be moved to be within both the floodplain and the two
97 hundred foot Shoreline Development Buffer. As part of the single lot subdivision
98 the applicant is required to put in approximately fourteen acres of reserved land.
99 This will be protected by a reserved land agreement.

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Staff recommends approval of this project. There is one outstanding issue, sometime in the early 2000s a stone paved walkways approximately seven foot one inch wide was put in along with brick raised planters. Applicant had his father's cremated remains buried in one of the planters. In order to record the final plat applicant would have to obtain a text amendment and/or a variance before final approval.

Staff recommendations include:

1. Address the March 17, 2016 Technical Advisory Committee comments from the Department of Planning and Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, and the Environmental Planner prior to final plat submittal.

Sean Callahan, Lane Engineering, agent for the applicant, appeared before the Commission on behalf of the client. He stated there was a discussion with the Commission in August of last year about walkways in the buffer. It is time to formalize things somewhat on this matter. For example, Kent County allows a driveway down to waterways. In 2008 when the Critical Area Buffer Laws were modified the Maryland Homebuilders Association was the only group involved in the law. Maryland Homebuilders lobby was present when the language was crafted and the state law allows a wall in the buffer. It says that the wall is not to be considered lot coverage. It also allows a walkway in the buffer, an impervious walkway. That was done because of the ambiguity in the law that the Maryland Homebuilders Association saw, especially on the western shore. Everybody has a house, everybody has a pier, everybody wants to get access to their pier without getting their feet wet. In 2008 when the Critical Area law got more teeth Maryland Homebuilders recognized this problems and they formalized some regulations in the state law. The Planning Commission hearing these different pieces last year agreed to take it under advisement. The County staff has been working toward some language in the proposed zoning text which will be formalized in the next year or two. He does not know what the applicant's position may be, he may want to come forward with his own text amendment. They may have to get to final.

Mr. Rothwell stated there is one other outstanding issue from sketch, the lot size waiver. The portion of the pipe stem within the critical area was just over five acres. If the Commission is comfortable with the lot configuration we can move forward with the lot size waiver at a future date.

Commission Boicourt stated he would like Mr. Callahan to convey to his client on a separate issue that not everyone on the Commission is happy about the Round Uping of the ditches on Marengo Road. It is unsightly, it is not environmental and it tends to undermine the Road service. This does not have a bearing on this case.

146 Commissioner Boicourt asked for public comment.

147
148 Commissioner Councill asked Mr. Rothwell if he said he preferred the 1.1 area of
149 the relocated reservation of development rights be placed in the floodplain? Mr.
150 Rothwell stated since Ms. Verdery has taken over as Planning Officer that is the
151 guidance he has been given, the one hundred, two hundred foot areas of the
152 floodplain that are environmentally sensitive. Commissioner Councill said those
153 areas are unbuildable anyway why couldn't it be put in agricultural land. Mr.
154 Rothwell stated that is a discussion that should be taken up with Ms. Verdery.
155 There are some instances, Administrative Variance and Variance where things are
156 put in the buffer. When you go through our Code for the reserve land areas and
157 reservation of development rights areas there is no guidance for where they
158 should be going. That is one of the things we want to shed a light on. We will be
159 discussing that soon.

160
161 One of the other issues related to this project is not allowing farm dwellings in the
162 critical area is something that can be addressed. In Kent County farm dwellings in
163 the critical area are permitted but you have to use a development right. This single
164 lot subdivision in the middle of a farm field makes it difficult. This new pipe stem
165 has to cut through the side of a farm field almost for no reason.

166
167 **Commissioner Spies moved to approve the Preliminary Major Revision Plat**
168 **for Edwin F. Hale, Sr., 26035 Marengo Road, Easton, Maryland 21601, with**
169 **all staff conditions being complied with, Commissioner Sullivan seconded the**
170 **motion. The motion carried unanimously.**

171
172 b. Annual Report on County Growth and Development

173
174 Mr. Sokolich presented the Annual Growth and Development Report. The format
175 the state requires on this report has changed this year, the map tells the story. This
176 essentially accounts for the development activity throughout the County. The past
177 few years we were in the single digits for new development, this year we tripled
178 that number. Development is scattered throughout the County. Since our County
179 priority funding area is relatively small most of the development that takes place
180 in the County is usually outside of our priority funding areas. When the state
181 looks at how the County is performing the state takes the municipal report like
182 this. We get points for keeping up with the growth aspect.

183
184 Commissioner Boicourt felt the map was very helpful. Commissioner Sullivan
185 asked if there was a chance to get Easton and the other town maps. Mr. Sokolich
186 stated he could check into that information. Commissioner Fischer asked about
187 the date on item 4 and which date is necessary. Mr. Sokolich stated he is seeking
188 guidance from the state and others to development the answer for this item.

189
190 There was a discussion regarding the capacity analysis. As an example the Town
191 of Trappe was used as an example where there was supposed to be excess on the

192 existing sewage treatment plant. This would allow the building of a large number
193 of new homes.

194
195 Mr. Rothwell stated that even if a subdivision has been approved, because of the
196 changes in the stormwater regulations, if the roads have not been platted these
197 subdivisions have to meet the new stormwater regulations. Unless there is a
198 strong market for growth and activity this can be a deal killer. Because everything
199 has to be retained on site this is a game changer. In some cases the subdivisions
200 have to be entirely re-platted.

201
202 Mr. Sokolich stated the other thing not mentioned in the Report is the guidance in
203 the Comprehensive Plan for demographic projections. Through 2030 we are at
204 one percent per year. This speaks to the demand question, why go to the expense
205 if there is no demand.

206
207 Commissioner Fischer suggested removing the words “upon completion” from
208 item 4. On item 5 he suggested corrected “Where” to “Were”.

209
210 Commissioner Boicourt stated the Commission would be interested in seeing
211 these reports for the Towns if it were possible to get copies. Mr. Sokolich stated
212 they were most likely preparing them also and he would attempt to contact them
213 and see if they would share copies.

214
215 Commissioner Boicourt asked for public comments; none were made.

216
217 **Commissioner Sullivan recommended that the County Council approve the**
218 **Annual Report on County Growth to the Maryland Department of Planning,**
219 **Commissioner Spies seconded the motion. The motion carried unanimously.**

220
221 c. Floodplain Management Ordinance update

222
223 Mr. Sokolich stated this amendment is to be in place when the maps are adopted,
224 July 20th. The Council will be introducing this text amendment in April. They will
225 be holding a hearing in May. If the Commission wants to review these further and
226 make a recommendation later that will not be a problem.

227
228 Most of the recommendations came from Federal Emergency Management
229 Agency (FEMA), the way the flood zones are labeled, changes in wording and
230 definitions for some items.

231
232 Section 70-12.B and 70-14.D., are local language changes. We found lately a
233 couple of other counties have done the same thing, and we had brought this
234 information to the Planning Commission’s attention previously. Some of the
235 engineering firms have shown that with greater accuracy on the lidar data we find
236 that the flood zone that we have now and the proposed July 20 flood zone, the
237 actual flood elevation could be somewhere in between. You could put property

238 owners at risk for not being eligible for insurance or not building to a prudent
239 standard, if you just went by the flood maps entirely. The amendments are for
240 new subdivisions to take place, when the engineer is out on the site anyway, to
241 require a certified topography under section 70-14.D. A certified field topography
242 survey is “recommended” for all new development and substantial alterations.
243

244 Commissioner Sullivan asked about 70-16.D. Mr. Sokolich stated this was an area
245 that the Code had to be more detailed.
246

247 Commissioner Boicourt stated he would be curious how the licensed professionals
248 worked with lidar, especially with vegetation.
249

250 Commissioner Fischer stated that he is comfortable with the changes.
251 Commissioner Boicourt stated Mr. Sokolich had pointed out the changes and he
252 was comfortable.
253

254 Commissioner Boicourt asked for public comments; none were made.
255

256 **Commissioner Spies moved to approve the update of the Floodplain**
257 **Management Ordinance, as recommended by staff; Commissioner Fischer**
258 **seconded the motion. The motion carried unanimously.**
259

260 5. Discussions Items

- 261 a. Mr. Sokolich stated that yesterday we received notification that the Town of
262 Easton would be annexing parcels on St. Michaels Road. There will be a hearing
263 with the Town Council on April 18th at 7:15 p.m. They propose to zone this as
264 commercial. Our question is how will this work with the five year hold. Is this
265 similar enough that we can waive the five year hold or can we do that. This will
266 come up in next month’s meeting.
267

268 Commissioner Fischer stated that the Commission has discussed the potential
269 activity of solar arrays in the County on several occasions. He asked if anything is
270 being done. Mr. Rothwell stated the current game plan is to wait until the
271 Comprehensive Plan is done. Ms. Verdery does not want to do piecemeal changes
272 to the County Code when we will be advertising for an Request for Proposal
273 (RFP) to have a consultant do a complete rewrite of the County Code in the next
274 few months.
275

276 Commissioner Boicourt stated it would be helpful to do some preliminary work;
277 find out what some other counties are doing. Mr. Rothwell stated Caroline County
278 has some fairly decent standards as far as giving direction to property owners as
279 far as minimizing their effect on agricultural land. We have had 4-5 pre-apps that
280 have not come to the PC yet. All have been in the 10-15 acre range. The guidance
281 he has been giving is putting at the fringe of fields to the greatest extent possible.
282 We have not had to deal with any 100± acre projects which is out of character and
283 scale for Talbot County. Somerset is doing a 200 acre solar panel field. Kent

284 County Planning Commission gave preliminary approval for a 120 acre field.
285 Queen Anne has a very large one across the County line on Route 404.
286 Commissioner Boicourt stated in his opinion taking away ten acres of working
287 farmland is not what we want.

288
289 Commissioner Spies questioned if you put in a solar array does the land maintain
290 its preferential agricultural use assessment for property tax purposes. Mr.
291 Rothwell stated that he was not able to contact the State Department of
292 Assessments and Taxation to answer this question. Commissioner Sullivan stated
293 if someone is doing a 100 acre solar array it has to be commercial use.

294
295 Commissioner Boicourt was not clear about the Public Service Commission. Mr.
296 Rothwell stated that to his knowledge, utility-scale solar projects with a
297 generation capacity greater than 70 megawatts are regulated by the Maryland
298 Public Service Commission (PSC). He stated that in these cases, the County has
299 an opportunity to comment and make recommendations to the Public Service
300 Commission, but explained that the PSC has the final authority to approve these
301 utility-scale solar projects. The PSC can thus, in certain instances, 'preempt' the
302 County's land use authority if it rules that the solar project, classified as a power
303 plant, is in the best interests of the State as a whole. Commissioner Boicourt
304 requested that this should be explicitly stated in the minutes. Commissioner
305 Fischer asked if the Planning Commission has any control over the establishment
306 of a plant. Mr. Rothwell stated the Planning Commission and County Council can
307 send a resolution to the Public Service Commission recommending against the
308 proposed project but that it does not have a binding effect.

309
310 Mr. Sokolich stated that Maryland Agricultural Land Preservation Foundation
311 (MALPF) looks at it a completely different way for properties that are under
312 easement. They look at on-site use versus what is billed back into the grid. If you
313 have utility records that show what on farm use is over a period of time you can't
314 build a system to generate more than 25% more than what the farm use is. Their
315 point of view is - what is necessary for the use of the property as opposed to a
316 commercial/industrial use.

317
318 Mr. Rothwell stated the State Farm Bureau put it in their legislative agenda that
319 they are against commercial solar facilities. Commissioner Councill stated his
320 concern is, and he understands why we don't want to do piecemeal zoning, but
321 this is a real threat right now. We may take up to a year to adopt a Zoning
322 Ordinance off of the Comprehensive Plan. What can be done? He is not against a
323 solar array that meets the needs of that property. Commissioner Councill stated
324 his personal opinion is he would rather see them located or tied closely to the
325 farm stem so that they don't stand out. But he is really, really concerned about the
326 activity he knows is out there for large scale solar activity in the County.

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328 Mr. Rothwell stated there was a lot of interest in the Allen Harim plant and he
329 received a number of calls on that site.

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Commissioner Spies stated precedent is a hard thing to overcome. Commissioner Councill asked if it is possible to recommend to the County Council that we place a moratorium on solar arrays that exceed the needs of that parcel. Mr. Rothwell stated exceeding the needs of a parcel gets really tricky, he recommended a projected generation.

Commissioner Councill stated the Land Preservation Board is pretty realistic with what is agricultural and what is commercial and we should look at that language. Commissioner Sullivan suggested we need to know what type of uses produce what type of facilities, on-site usage. Mr. Rothwell stated the way electricity is regulated is a thirteen state compact, electricity goes into a grid which stretches from Illinois to Connecticut. Commissioner Spies stated his fear is that there will be a number of acres interested for short time but once you put in a solar array you don't rotate it back to agriculture. This is a very short sighted fix.

Commissioner Sullivan stated there seems to be a consensus this is something we are all worried about, we need to start doing something now. Commissioner Boicourt stated it is worth mentioning the M-word. He understands no County Council is happy with a moratorium. On the other hand he believes it is important enough to give us time to develop a rational ordinance for this. Commissioner Councill stated as a second thought, that is where we need to meet as quickly as we can, does it have any teeth for this Commission to take a vote formal vote that it is our opinion that large scale solar arrays are not typical of a not consistent with the rural character.

Mr. Rothwell stated he can say solar arrays over 100 kilowatts are considered utility structures. One 100 kilowatts is the threshold we used for the wind turbines, for a building permit, special exception and site plan approval, it is probably less than half an acre of solar panels.

Commissioner Boicourt stated we can do both things, ask for moratorium and ask Mike and Tony for a text amendment sooner rather than later.

Mr. Sokolich stated this is like the issue we had a few years ago with cell towers. He would like to have that conversation with Mary Kay, Mike Pullen and with Andy Hollis to decide what we want and what we don't want. Commissioner Fischer stated that is fine, but reaching a consensus on that language could take months. Mr. Sokolich stated that is why we need to start with that now. He stated he would get to the point of where we have a contractor in to write the Zoning Ordinance and don't have a clear idea of where we want to go. Commissioner Fischer stated he and Commissioner Councill are talking about doing something today that puts the Commission on record. We could vote on something as simple as a statement like: "In light of the rapidly increasing interest in the construction of large scale solar arrays the Planning Commission recommends the County

375 Council establish a moratorium on the approval of solar arrays in excess of X
376 kilowatts until completion of the Zoning Amendment.”
377

378 Mr. Rothwell stated he did not think the Commission could vote on something
379 without it being advertised. It could be placed on the agenda for next month.
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381 Commissioner Boicourt stated given that there is Commission consensus he felt a
382 moratorium would protect us. Mr. Rothwell stated we will probably be seeing
383 projects before the end of the year because the tax credit expires at the end of the
384 year. Commissioner Boicourt asked if the staff is before the Council soon and if
385 they can let the Council know that the Commission is concerned about this issue.
386 Commissioner Boicourt asked the Commission if they would like him to write a
387 letter to the County Council and there was a full consensus to do so.
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389 b. Commissioner Fischer stated when we finish the Comprehensive Plan process and
390 move into the Zoning Plan, what roles does the Planning Commission play?
391 Commissioner Boicourt stated the last time there was a series of meetings with
392 the consultants. Mr. Rothwell stated not necessarily since they are updating the
393 entire County Code, Road Maintenance and all. Mr. Sokolich stated there will
394 probably be major topics like village density and solar, and other text
395 amendments. Mr. Rothwell stated he recommended there should be a separate
396 sub-contractor dealing with village zoning. But he does not know if that will be
397 done.
398

399 c. Mr. Rothwell stated he went before the County Council two weeks ago. We
400 received \$60,000 from the Department of Natural Resources under the working
401 waterfront grant to complete two village master plans for Tilghman and Bellevue.
402 We advertised on March 11th and released the RFP. We had nine proposals.
403 They were well written proposals. We will do interviews in next 2-3 weeks. We
404 have spoken about forming citizen advisory committees. It has been proposed that
405 one Planning Commission and one County Council member be on each
406 committee. Commissioner Sullivan stated that the committee should not be
407 limited to only the citizens of the village, the village affects the surrounding areas.
408

409 Commissioner Fischer stated it is important for the successful bidder to
410 understand that Master Plans are intended to be governors of development, not
411 incentives.
412

413 **6. Staff Matters**

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415 **7. WorkSessions**

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417 **8. Commission Matters**

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419 **9. Adjournment**—Commissioner Boicourt adjourned the meeting at 10:33 a.m.
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