

1 April 27, 2016



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

5 Wednesday, March 2, 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:

18 Staff:

11  
12 William Boicourt, Chairman

19  
20 Mary Kay Verdery, Planning Officer

13 John N. Fischer, Jr., Vice Chairman

21 Jeremy Rothwell, Planner I

14 Michael Sullivan

22 Mike Mertaugh, Assistant County Engineer

15 Paul Spies - Absent

23 Carole Sellman, Recording Secretary

16 Phillip "Chip" Councill

24

17

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26

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

28  
29 **2. Decision Summary Review:**

30  
31 a. January 6, 2016—The Commission noted the following corrections to the draft  
32 decision summary:

33 i. Line 51, check and make sure this is a complete sentence. The complete  
34 sentence reads: "Commissioner Fischer proposed that the definitions for  
35 Tier III-A and Tier III-B should start with 'This sub-tier identifies areas'."

36 ii. Line 116, delete "it" and insert "that": "Commissioner Fischer stated that  
37 there appears to be some importance assigned to the fact that none of the  
38 new construction will extend closer to tidal water."

39 iii. Line 208, insert a period after Plan at the end of the line. "This project also  
40 has to get minor site plan approval."

41 iv. Line 368, Commissioner Hughes was not at the meeting, check who was  
42 speaking and correct. Change to read: "Commissioner Boicourt recessed  
43 the meeting at 4:05 p.m., until Monday, January 11, 2016 at 11:00 a.m."

44  
45 **Commissioner Councill moved to approve the draft Planning**  
46 **Commission Decision Summary for January 6, 2016, as amended;**  
47 **Commissioner Sullivan seconded the motion. The motion carried**  
48 **unanimously.**

49  
50 b. February 3, 2016—The Commission noted the following corrections to the draft  
51 decision summary:

52 i. Line 41, Longwoods was misspelled, missing the "s".

- 53 ii. Line 277, correct to read: “Murray Hunt, who lives across the street, stated  
54 that many of the neighbors are very concerned about property values and  
55 about their children.”
- 56 iii. Line 333, corrected to read: “Commissioner Fischer stated that we need to  
57 look at the Cottage Industry regulation.” Delete the rest of that phrase.
- 58 iv. Line 8, Commissioner Sullivan stated he received a letter from the Mid-  
59 Shore Board of Realtors that stated there were some people that were at  
60 the Commission meeting that attributed a quote to him that was not the  
61 quote he actually made. It refers to Line 351. Which reads: “He should not  
62 have relied on his real estate broker.” I would like to add: “as the agent is  
63 not necessarily going to know.” which is what my quote actually was.  
64 Commission Sullivan sent the Maryland State Board of Realtor letter and  
65 went and spoke with them yesterday and told them what was actually said.  
66 He explained the context and he was not trying to impugn the knowledge  
67 of the broker. The entire conversation was about the fact that the applicant  
68 was a business man with current business in this County, therefore he has  
69 gone through the licensing and/or permitting process. He had the  
70 knowledge and should have known the land use issues should have been  
71 directed through the Planning staff. Commissioner Sullivan stated he was  
72 not trying to impugn and he apologizes if anyone took offense, but it was  
73 not directed at the real estate agent, it was directed that the applicant as he  
74 should have known.

75  
76 Duane Hillman, a member of the Mid-Shore Board of Realtors, and on the  
77 Board of Directors. He stated he was present at the meeting that day. He  
78 stated that Commissioner Sullivan embarrassed all realtors that serve the  
79 Mid-Shore by his unprofessional and unethical comments and he did state  
80 that realtors don’t know anything collectively. He stated it should be on  
81 the transcript. Commissioner Sullivan stated it was not on the transcript.  
82 Mr. Hillman asked why it was not. Ms. Verdery explained that the  
83 Planning Commission provided a summary of the decision, but if he  
84 wanted a copy of the recording could be provided. Commissioner Sullivan  
85 stated the issue was still that he was referring to land use issues which is in  
86 the purview of land use staff. The broker is not the person the purchaser  
87 should be going to for land use issues. The cottage industry rules have  
88 recently been changed. When the Commission has issues that they are not  
89 sure of they rely on staff to look it up. This was a tough case, the owner  
90 heard what he wanted to hear and ran with it. Commissioner Sullivan  
91 stated he was trying to make a point that for a land use matter you need to  
92 go to the appropriate agency. He stated if he inartfully worded it and  
93 offended anyone he apologizes and he apologized in a letter to the Board  
94 of Realtors. He stated he is pretty sure that the owner knew that there was  
95 a land use issue and he should have gone to the County Planning Office  
96 and he unfortunately did not. That put his neighbors in a bad position, he  
97 is in a bad position since he already bought the house. It is an  
98 uncomfortable situation but we have to stand by the rules and regulations

99 and that did not qualify for cottage industry use. He cannot blame it on the  
100 broker, his architect or anybody else.

101  
102 Mr. Hillman said to make a public comment that realtors do not know  
103 anything, was an unprofessional comment. Commissioner Sullivan stated  
104 that was not what was meant. He meant Realtors would not have the  
105 knowledge as it applies to this situation. He stated he is a broker and he  
106 would not insult himself. It was not meant that way and he thinks the  
107 record states that.

108  
109 v. Line 413, TMDL, shouldn't there be a recommendation, check the tape.

110  
111 "Commissioner Spies moved to recommend to the County Council  
112 approval of the TMDL/WIP Achievement Report for 2015, with cost  
113 evaluations where appropriate; Commissioner Sullivan seconded the  
114 motion. The motion carried unanimously."

115  
116 vi. Line 473, correct to read: "approval of", "Commissioner Fischer moved to  
117 recommend to the County Council approval of the Flood Insurance Rate  
118 Maps (FIRMs) and Flood Insurance Study (FIS); Commissioner Sullivan  
119 seconded. The motion carried unanimously.

120  
121 Commissioner Fischer recommended approval of the draft Planning  
122 Commission Decision Summary for February 3, 2016, as amended;  
123 Commissioner Councill seconded the motion. The motion carried  
124 unanimously.

125  
126 **3. Old Business**—None.

127  
128 **4. New Business**

129  
130 a. Administrative Variance—Todd Hoopes and Dorothy Hoopes, #A226—4361  
131 Bachelors Point Road, Oxford, MD 21654, (map 53, grid 13, parcel 126, lot 6,  
132 zoned Rural Residential), Pamela P. Gardner, AIA, Agent.

133  
134 Mr. Rothwell presented the staff report of the applicant's request of an  
135 administrative variance:

- 136  
137 1.) To expand the gross floor area (GFA) of an existing one-story dwelling by  
138 approximately 10.65% (231 sq. ft.) within the 100 ft. Shoreline  
139 Development Buffer.  
140 2.) To construct an approximately 108 sq. ft. covered porch on the southeast  
141 face of the existing primary dwelling within the 100 ft. Shoreline  
142 Development Buffer.

- 143 3.) To construct an approximately 233 sq. ft. entry porch and stoop on the  
144 northwest face of the existing primary dwelling within the 100 ft. Shoreline  
145 Development Buffer.  
146 4.) To construct an approximately 78 sq. ft. brick sidewalk within the 100 ft.  
147 Shoreline Development Buffer.  
148

149 Staff recommendations include:  
150

- 151 1. The applicant shall make an application to the Office of Permits and  
152 Inspections, and follow all rules, procedures, and construction timelines as  
153 outlined by regarding new construction.  
154 2. The applicant shall commence construction on the proposed improvements  
155 within eighteen (18) months from the date of the Planning Office's 'Notice  
156 to Proceed'.  
157 3. Natural vegetation of an area three times the extent of the approved  
158 disturbance in the buffer shall be planted in the buffer or on the property if  
159 planting in the Buffer cannot be reasonably accomplished. Disturbance  
160 outside the buffer shall be 1:1 ratio. A Buffer Management Plan application  
161 may be obtained through the Department of Planning and Zoning.  
162 4. The applicant shall be required to replace the existing 844 sq. ft. impervious  
163 deck with a pervious deck of equal or lesser size as shown on the site plan.  
164 5. The applicant shall be required to remove the 364 sq. ft. of existing  
165 impervious surfaces, as shown on the site plan.  
166 6. The applicant shall be required to comply with Chapter 70, Floodplain  
167 Management, of *The Talbot County Code*.  
168

169 The property is bordered on three sides by tidal waters so there is a 100 foot  
170 buffer that goes around three sides of the property. The sewage disposal area  
171 (SDA) takes up a significant area of the property that is outside of the Shoreline  
172 Development Buffer. Almost the entire dwelling is within the shoreline  
173 development buffer. This particular property has a very constrained building  
174 envelope. The applicant is proposing a pretty extensive renovation including  
175 raising the house and adjusting the pitch of the roof. They are going to fill in some  
176 portions of the house which are currently under a covered porch, already  
177 impervious surface. Most of this is a reconfiguration rather than new lot coverage.  
178 This proposal will result in a net reduction in lot coverage of 796 square feet.  
179 There is a note on the site plan proposed pervious deck – there is an existing deck  
180 which applicant is proposing to make pervious.  
181

182 Pamela Gardner, Architect, Easton, MD, stated that most of house in the one  
183 hundred foot buffer. The house was built in the 80s. The floor plan has some of  
184 the quirkiness of the architecture thought to be cool in the 1980s, like going  
185 outside to get to the master bedroom. The applicants are trying to bring the house  
186 into current standards to make it livable. This means we are going to be over fifty  
187 percent of current value which means we have to raise the house to comply with  
188 floodplain requirements. The house has to be raised three feet and we are going to

189 raise the deck as well. That has to necessitate adding more stairs. We are adding a  
190 breezeway so you can be inside to get to the master bedroom. The other changes  
191 are basically infills of the L shape. Also we are relocating a fireplace. Ms.  
192 Gardner stated they are getting rid of a shed and the concrete pad in front of the  
193 shed.

194  
195 Commissioner Fischer asked if there were any flooding problems in the last ten  
196 days. Ms. Gardner stated she was not sure in the last ten days but in the past  
197 month at one point they did have to evacuate. Commissioner Boicourt clarified  
198 the covered entry on the north side is being removed, and there is no additional lot  
199 coverage.

200  
201 Mr. Rothwell stated he would note two of the existing staff conditions would be  
202 to replace the impervious deck with a pervious deck. Also this property is one of  
203 relatively few which is in the Coastal V zone, so applicant would be required to  
204 comply with Chapter 70 of the Floodplain Management Ordinance for properties  
205 in the V Zone. Commissioner Cuncell asked the agent if she was familiar with  
206 that. Ms. Gardner stated that she was. She also stated that there are new maps  
207 coming in July. At that time the property leaves the V zone. They intend to wait  
208 until that time to begin. Mr. Rothwell stated with an Administrative Variance the  
209 applicant has eighteen months to apply and obtain a building permit. Whatever  
210 the flood maps are at the date of approval are the flood maps and standards that  
211 the applicant has to abide by.

212  
213 Commissioner Boicourt asked for public comment.

214  
215 Chris Waters, Waters Land Surveying, asked if when they applied for the building  
216 permit is that when the floodplain maps go into effect. Ms. Verdery stated the  
217 maps go into effect on July 20<sup>th</sup>. Mr. Waters clarified that then if they applied for  
218 the permit after July 20<sup>th</sup> they would be under the new maps. Ms. Verdery stated  
219 that was correct.

220  
221 **Commissioner Sullivan moved to recommend the Planning Officer approve**  
222 **the Administrative Variance for Todd Hoopes and Dorothy Hoopes, 4361**  
223 **Bachelors Point Road, Oxford, Maryland 21654, provided compliance with**  
224 **staff conditions occurs, and compliance with Chapter 70 of the *Talbot County***  
225 ***Code*. Commissioner Fischer seconded the motion. The motion carried**  
226 **unanimously.**

227  
228 b. Sharp Energy, Inc. c/o Walter Schwaninger—9387 Ocean Gateway, Easton, MD  
229 21601 (map 52, grid 12, parcel 27, zoned General Commercial/Limited  
230 Industrial), Elizabeth Fink – Fink, Whitten & Associates, LLC, Agent.

231  
232 Mr. Rothwell presented the staff report for the major site plan to construct a  
233 vehicle propane pumping station, and an accompanying paved access loop. This  
234 proposed use is classified as ‘Automobile, Service, Repair, Washing and Fuel

235 Sales' use in accordance with the *Talbot County Code* §190-29. The applicant is  
236 also requesting a two part landscaping waiver. The first part is for the waiver of  
237 the twenty-five percent minimum landscaping area for those parcels within the  
238 General Commercial (GC) and Limited Industrial (LI) zoning districts. The  
239 second part is for the mandatory street tree requirements for all site plans. The  
240 zoning along Route 50 in this general area is somewhat convoluted and has not  
241 been changed since 1991. The applicant is split between the GC and the LI. This  
242 property is not within the Gateway zoning. In 1993 when the applicants first  
243 signed the lease with Mr. Taylor, who owned this property, they obtained a  
244 special exception from the Board of Appeals to establish flammable liquid and  
245 wholesale storage. They installed a thirty thousand gallon propane storage tank.  
246 Since that time the use has remained the same. In 2012 the applicant purchased  
247 the property and cleaned up the property boundaries.  
248

249 The applicant is proposing to install a vehicle pumping station. This will be used  
250 to service things like RV trailers, small buses, propane powered vehicles. They  
251 will be using the existing 30,000 gallon tank, they will not be installing a new  
252 tank. It will be set up similar to the Southern States model where if you were a  
253 member you would have particular card or code you would use for that location.  
254 Not just anyone off the street could come in a use those pumps.  
255

256 The existing fence would be moved back a number of feet and there would be a  
257 service loop for vehicles to come in to access the pump. The applicant has  
258 proposed three parallel parking spaces along Reagan Drive. Staff has  
259 recommended those parking spaces be moved to where parking is already being  
260 used, just north of the office building. Staff wants to avoid to the greatest extent  
261 possible, for safety purposes, vehicles backing up onto a private road. The  
262 applicant has proposed to install handicapped accessible parking space, van space  
263 and sign in compliance with the Americans with Disabilities Act (ADA)  
264 requirements.  
265

266 In the *Talbot County Code*, street trees are required for all major site plans. The  
267 Planning Commission has the ability to require both sidewalks and street lights.  
268 Because the pavement goes right up to the state right of way and because you do  
269 need to provide a twenty-four foot access in the parking spaces, there really is not  
270 any existing space to put street trees, sidewalks or street lights. Commissioner  
271 Boicourt asked if the County has any ability to ask for them to be put into the state  
272 right of way. Mr. Rothwell consulted Mr. Mertaugh who stated the state could  
273 certainly be asked. Mr. Rothwell further stated this particular property has been in  
274 commercial use and has been impervious use since the 1970s. Staff is willing to  
275 support the waiver request.  
276

277 Staff recommendations include:

- 278
- 279 1) The applicant shall be required to relocate the three proposed parallel parking  
280 spaces to the north of the existing office building along the service yard fence.

- 281 2) The applicant shall be required to move the proposed access loop 2-5 ft. to the  
282 west to provide a buffer and offset to the existing eastern property boundary.  
283 3) Address the February 10, 2016 TAC comments from the Department of  
284 Planning & Zoning, Department of Public Works, Environmental Health  
285 Department, Talbot Soil Conservation District, and the State Highway  
286 Administration (SHA) prior to CRM submission.  
287 4) The applicant shall commence construction on the proposed improvements  
288 within twelve (12) months from the date of final approval.  
289 5) The applicant shall make applications to and follow all of the rules,  
290 procedures, and construction timelines as outlined by the Office of Permits  
291 and Inspections regarding new construction.  
292

293 Elizabeth Fink with Fink, Whitten & Associates, Ron Patrick, Sharp Gas, and  
294 Walter Schwaninger, Sharp Gas appeared before the Commission. Mr. Patrick  
295 stated the need to go green has been a Sharp push. Propane has certainly become  
296 one of those options which is easy to obtain. We serve well over a half million  
297 gallons. We serve DART buses from Delaware, they are converting their buses to  
298 propane. There is a place in Wilmington that has 122 school buses which is  
299 converting 30 school buses to propane. We are trying to establish a footprint of  
300 places people can go fill up. You can convert your vehicle to propane, but if you  
301 can't fill up it is useless. The problem in the propane industry has been no one  
302 wants to put out the money to put up the infrastructure. Our company has made a  
303 decision to build the infrastructure. Without this application we have fourteen  
304 dispensers set up on Maryland, Delaware and Virginia, and three in Pennsylvania.  
305 We have the ability to fill small tanks and motor homes. This is for bigger tanks.  
306 This nozzle locks on and fills up, there is no residual propane. All of our delivery  
307 trucks are propane, along with all of our smaller trucks and cars.  
308

309 Commissioner Fischer asked if this site is similar to other Sharp Energy sites in  
310 Pennsylvania and Virginia. Mr. Patrick stated that yes it is, they are going to tie in  
311 the existing tank so they do not have to worry about another tank. They all have  
312 card readers. All of their sites are similar. They have a site in Salisbury that is a  
313 dual site. They have a site in Delaware and the Code says twenty-five feet from  
314 the roadway and they are twenty-five feet from the roadway and all the Dart buses  
315 fill up from it with no problems. Commissioner Fischer asked if he had figured  
316 how busy this pump might be, if he thought there might be a back up onto Reagan  
317 drive. Mr. Patrick stated it would be a nice problem to have vehicles stack up, but  
318 he does not imagine that will be a problem.  
319

320 Commissioner Councill stated he supports the use, he thinks it is great. He  
321 confirmed that from what he heard it would be occasionally buses, but usually six  
322 wheel trucks. Mr. Patrick said this would mostly be six wheel trucks or smaller.  
323 He stated they talked to Talbot County about their school buses. Usually when a  
324 company has several vehicles of their own they prefer to fuel at their location for  
325 convenience to them. Commissioner Councill stated he has a concern of trucks  
326 turning off the highway, when they come out their line of sight will be limited.

327 His concern is that it is too narrow for that use. Is it possible to have this facility  
328 one way only where the vehicles come from the east and the exit onto Route 50.  
329 Mr. Patrick said he would like to say that, but there are some vehicles that fuel up  
330 on the driver's side, but there are some that fuel up at the rear, and there are some  
331 that fuel up on the passenger side. Commissioner Councill asked Mr. Mertaugh if  
332 he was comfortable? Mr. Mertaugh stated it was a valid concern. He worked with  
333 Mr. Patrick and Mr. Schwaninger on this site. He stated he does not have a  
334 definitive answer. There is going to be some signage required for this site. It also  
335 goes back to Mr. Fischer's point of traffic queuing from Route 50. Commissioner  
336 Boicourt stated what about the possibility of increasing the size of the entrances.  
337 Ms. Fink and the applicants stated they would have no problem with increasing  
338 the entrances. Mr. Mertaugh said they have a minimum of seventy degrees  
339 between the main line and the side approach. So he is all right as long as that  
340 angle can be achieved. He said one of the things Public Works wants to see is  
341 that, at least as far as the site plan, whatever vehicles can negotiate this entrance  
342 on paper, that the site plan clearly states this limit.

343  
344 Commissioner Boicourt asked for public comment, there was none.

345  
346 **Commissioner Councill moved to approve the major site plan for Sharp**  
347 **Energy, Inc. c/o Walter Schwaninger, 9387 Ocean Gateway, Easton, MD**  
348 **21601, with staff conditions being complied with, and final ingress/egress**  
349 **dimension changes must be reviewed and approved by Mike Mertaugh,**  
350 **Assistant County Engineer, Public Works Department; Commissioner**  
351 **Sullivan seconded the motion. The motion carried unanimously.**

352  
353 Commissioner Boicourt asked for public comment on the waivers, there were  
354 none.

355  
356 **Commissioner Sullivan moved to approve the street tree and landscape**  
357 **waivers for Sharp Energy, Inc. c/o Walter Schwaninger, 9387 Ocean**  
358 **Gateway, Easton, MD 21601, with staff conditions being complied with,**  
359 **Commissioner Fischer seconded the motion. The motion carried**  
360 **unanimously.**

361  
362 c. Shelvest, Inc./Robert Evans—11710 Longwoods Road, Easton, MD 21601 (map  
363 10, grid 11, parcel 103, zoned Agricultural Conservation), Ryk Lesser, Green  
364 Energy Systems, Agent.

365  
366 Commissioner Boicourt stated that the Commission had considered the possible  
367 conflict of Commissioner Councill owning a property across the road from the  
368 applicant, so in some sense he is a neighboring property.

369  
370 Ryk Lesser, Green Energy Systems for Shelvest, Inc. owned by Robert Evans  
371 introduced himself to the Commission and noted that he did not object to  
372 Commissioner Councill participating in the review of this project.

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Mr. Rothwell presented the staff report for two items: the first is for a recommendation for a special exception to the Board of Appeals to establish a utilities structure use for a 1.507 acre fenced compound for eight solar panels; the second is a major site plan for the same use and same improvements. In the *Talbot County Code* and in the Comprehensive Plan we have very little guidance when it comes to solar arrays and solar fields. In the past when we have gone to the Board of Appeals we have classified them as utility structures. In the past we have not had to distinguish between a residential associated solar panel which only require a building permit and something which is a commercial enterprise. In reviewing this project we reviewed it and decided to use the standards which are already in place for wind energy. For our small wind turbines, the differentiation between a small residential wind turbine, which only requires a building permit, and one which requires a special exception we used the one hundred kilowatt standard. This project is just over the one hundred kilowatt. The proposed project is located along Route 50. In 1995 the Board of Appeals denied a special exception for a three hundred foot cell tower. It went to County Circuit Court. The Court upheld the ruling for a two hundred foot maximum for a communications tower and remanded the case back to the Board of Appeals for a cell tower. The tower was constructed some distance from Route 50 and an access road was constructed off of Longwoods Road. The applicant is proposing to construct eight solar panels. The first will be fifty-five feet in length instead of ninety feet in length. The applicant had to amend the site plan from initial submission due to the setbacks from Route 50 and the perennial stream.

Mr. Rothwell stated we do have guidance in terms of the screening of incompatible or unsightly uses from one another and the protection of scenic byways. The applicant has agreed to plant, in conformance with the *Talbot County Code* arborvitae along three sides. So along the north side, the south side and along the east side, along US Route 50 and Longwoods Road. The applicant will not be using any screening along the western face. Approximately an acre and a half of agriculture field will be taken out of production. This is directly next to a transmission line.

Staff recommendations include:

1. The applicant shall be required to obtain a Special Exception from the Board of Appeals to construct the proposed photovoltaic field.
2. Address the February 10, 2016 TAC comments from the Department of Planning & Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, and the State Highway Administration (SHA) prior to CRM submission.
3. The applicant shall be required to provide a 10 ft. –wide vegetative screen along the north, east, and south faces of the proposed photovoltaic field.
4. The applicant shall commence construction on the proposed improvements within twelve (12) months from the date of final approval.

- 419 5. The applicant shall make applications to and follow all of the rules,  
420 procedures, and construction timelines as outlined by the Office of Permits  
421 and Inspections regarding new construction.  
422 6. This project will be required to address forest conservation, to include  
423 mitigation for the removal of any trees.  
424 7. The applicant is required to remove the fence once construction has been  
425 completed.  
426

427 Commissioner Boicourt stated that he is concerned as they have been going  
428 through the Comprehensive Plan and the struggle of trying to keep this County as  
429 rural as possible, he worries about large parcels of farmland being lost to solar  
430 panels. He would like to turn this back to the staff and ask if we could fairly  
431 urgently come up with a text amendment and get in touch with the County  
432 Council. He has seen other Counties and Virginia covered with solar panels.  
433

434 Mr. Lesser stated this is an acre and a half off of a ninety-seven acre parcel that  
435 Mr. Evans owns. He stated this is a small system. He is in agreement that  
436 language should be adopted such as was adopted for the wind systems a few years  
437 ago, for large installations, several megawatts or more, so that they do not  
438 dominate the landscape.  
439

440 Commissioner Fischer stated we need to take advantage of this to try to get some  
441 language in the Comprehensive Plan. Ms. Verdery stated we have language in the  
442 draft Comprehensive Plan. Commissioner Fischer stated we need to move on  
443 from there to the County Code.  
444

445 Mr. Lesser mentioned the solar panels at MEBA are two panels tall and spread  
446 out more. He designed these five tall to condense them so they would take up less  
447 land.  
448

449 Commissioner Boicourt mentioned another plant than arborvitae because of the  
450 fact that deer like to eat them. Mr. Lesser stated they were suggested by Ms.  
451 Deflaux at TAC. Commissioner Boicourt stated he would like some other  
452 screening that would grow higher and if some other species were considered,  
453 especially on the northside.  
454

455 Commissioner Councill stated that all of these projects are fenced and he  
456 wondered if this is a County requirement. Mr. Rothwell and Ms. Verdery stated it  
457 is not a County requirement. Mr. Lesser stated he would like to fence it during  
458 construction because the panels are quite valuable, but if fencing is not required,  
459 once construction is completed they would like to remove it.  
460

461 Commissioner Sullivan asked what the use of the electricity is? Mr. Lesser stated  
462 the farm was quite a large undertaking. There are several large barns, several  
463 houses for the people who work on the farm, they are going to be doing virtual net

464 metering. All the generation from this array will serve the houses, etc. on this  
465 parcel. They are going through Choptank and they are all onboard.

466  
467 Commissioner Fischer stated he is concerned about the ten foot height of this  
468 array and does not believe anything is going to screen this very effectively. He  
469 does not think this is a good site for this project. We are just beginning to deal  
470 with these solar array and are going to have many more of these solar arrays  
471 coming into this County. He hates to set a precedent with an array that is going to  
472 be very visible, especially coming from the north.

473  
474 Commissioner Sullivan stated, along the lines of cell phone towers, that looking  
475 into the future everyone wants the service but nobody wants the towers. This is  
476 not particularly new but it has environmental considerations long term as far as  
477 this plan is concerned. He stated that we have to think very carefully about not  
478 putting ourselves in the box that we have created with the cell phone towers  
479 where we want the service but not the cell phone towers. When everything is new  
480 you see it, but once it is there it just blends in and you don't see it anymore.  
481 Commissioner Fischer stated you can have a solar array without going ten feet  
482 high, and you can provide power to this gentleman somewhere else on this  
483 enormous property, not next to the highway.

484  
485 Mr. Lesser stated there is a strategy in doing this, because they are grouping like  
486 elements together. They are putting a solar field that is passive, no moving parts,  
487 no sound, no off gassing, next to a cell tower which has already been permitted. If  
488 we put it in the middle of a field it will stand out like a sore thumb. Compared to  
489 MEBA or the Community Center, ours is going to be screened.

490  
491 Mr. Rothwell stated we have to look at it from a few different angles. One is the  
492 scale issue. They are using an existing access driveway. If they put it in the  
493 middle of a farm field they might have an acre or an acre and a half of solar  
494 panels, but he would have to take two or three acres of agricultural land to create  
495 an access road. We try to put them on the fringe of the fields and use existing  
496 access roads as much as possible. Mr. Rothwell agrees Route 50 is a highly  
497 visible roadway, but they are minimizing impact. Commissioner Councill stated  
498 he is in support of this but in all fairness there are other access roads on this  
499 property.

500  
501 Ms. Verdery asked what is the proposed land use between the proposed panel and  
502 the existing driveway, is that still going to be maintained in farmland? Mr. Lesser  
503 stated most of the time they farm around it. Ms. Verdery questioned if they could  
504 moved the screening back. Mr. Lesser stated they would be back in the state right  
505 of way. Ms. Verdery stated they can do plantings and screening in the state  
506 highway setback. They could not place structures in the setback.  
507

508 Commissioner Fischer also shares Commissioner Boicourt's concern about  
509 Arborvitae, under heavy snow they spread and crack. He suggested holly.  
510 Commissioner Boicourt also stated cedar might work.

511  
512 Commissioner Boicourt asked for public comment.

513  
514 Ryan Showalter commented on the Comprehensive Plan and the text amendment  
515 regarding solar panels. Based on transmission capacity and cost of these systems  
516 he does not feel we are at risk of the County being overrun by solar panels. He  
517 feels Talbot County should be the leader in green energy deployment and  
518 development. He encourages the Commission to keep an open mind and make  
519 sure we do not go down the path of prohibiting something just because it is  
520 different.

521  
522 Commissioner Sullivan stated the ability to move the vegetation back and make it  
523 a little high would alleviate a lot of the issue here. Commissioner Sullivan asked  
524 how much more efficient is an array going east/west as compared to north/south.  
525 Mr. Lesser stated it loses its efficiency amazingly. The difference between the  
526 perfect angle of incidence to the sun and absolutely flat is perhaps 10%. But when  
527 you lose efficiency for the entire length of the solar day by moving it facing one  
528 way or another you are cutting your production almost in half. This angle will  
529 take many tons of CO2 out of the air.

530  
531 Mr. Rothwell stated that the application also had a waiver for street trees. Since  
532 this project was proposing screening with trees, they were requesting a waiver of  
533 the street tree requirement. Considering applicant is installing a fair amount of  
534 screening staff is comfortable with the waiver.

535  
536 **Commissioner Sullivan moved to approve the major site plan for Shelvest**  
537 **Inc. c/o Robert Evans, 11710 Longwoods Road, Easton, MD 21601, with staff**  
538 **comments being complied with, it is requested that applicant work with the**  
539 **Environmental Planner to move the east side vegetative screen, add**  
540 **increased height to further block the northside view from the highway and**  
541 **change the type of tree; the fence is to be removed after construction.**  
542 **Commissioner Councill seconded the motion. The motion was passed 3 to 1.**  
543 **Commissioner Fischer voted to deny the application.**

544  
545 **Commissioner Sullivan moved to grant the waiver for the street tree**  
546 **requirement for Shelvest Inc. c/o Robert Evans; Commissioner Fischer**  
547 **seconded the motion. The motion carried unanimously.**

548  
549 Mr. Rothwell presented Commission with the staff report for the Board of  
550 Appeals Special Exception. There were a series of warrants that the applicant is  
551 required to provide evidence for and the burden of proof, in the opinion of staff  
552 the applicant has met those individual warrants.

553

554 Commissioner Boicourt asked if there was any question of glare onto Route 50.  
555 Mr. Lesser stated that modern panels have a granulated surface that is anti-glare,  
556 they want the sunlight to hit the panel and diffuse and diffract.  
557

558 Commissioner Boicourt asked for public comment.  
559

560 **Commissioner Sullivan recommended to the Board of Appeals to approve the**  
561 **special exception for Shelvest Inc., c/o Robert Evans, 11710 Longwoods**  
562 **Road, Easton, MD 21601. It is requested that the applicant work with the**  
563 **County’s Environmental Planner to relocate the vegetative screen, add stock**  
564 **with increased height to further block the view from the highway and use a**  
565 **variety of tree species; the fence is to be removed after construction.**  
566 **Commissioner Cuncell seconded the motion. The motion was passed 3 to 1.**  
567 **Commissioner Fischer voted to deny the application.**  
568

569 d. Long Point Preserve, LLC, c/o Ray Jackson, Richard Osborne and John T.  
570 Benjamin Estate, Property Owner—29275 Dogwood View, Oxford, MD 21654  
571 (map 47, grid 22, parcel 42, zoned Rural Conservation/Western Rural  
572 Conservation), Sean Callahan, Lane Engineering, LLC, Agent.  
573

574 Sean Callahan, Lane Engineering, Ray Jackson and Richard Osborne, Long Point  
575 Preserve, LLC purchasers of the land, and Ryan Showalter appeared before the  
576 Commission.  
577

578 Mr. Rothwell presented the Staff Report to the Commission.  
579

580 Staff recommendations include:  
581

- 582 1. The applicant shall be required to revise the path of Winfield Farm Lane to  
583 avoid the non-tidal wetlands in the vicinity of Lot 4.
- 584 2. The applicant shall be required to remove the excess non-conforming  
585 accessory dwellings (or convert them accessory residential structures) on  
586 Lots 2, 5, 6 and the Long Point Deed Parcel so that there is only one primary  
587 dwelling on each parcel.
- 588 3. Address the February 10, 2016 TAC comments from the Department of  
589 Planning & Zoning, Department of Public Works, Environmental Health  
590 Department, Talbot Soil Conservation District and the Environmental  
591 Planner prior to preliminary plat submittal.
- 592 4. Applicant shall include a building envelope for Lot 1.
- 593 5. Applicant is requested to extend Long Point private road to the driveway at  
594 Lot 5 and shorten the pipe stem.
- 595 6. Applicant is requested to add to the SDA for Lot 7, abandon the existing lot  
596 line between Lot 6 and Lot 7.  
597

598 Mr. Rothwell stated the applicant was proposing four different things. There is a  
599 five lot small scale subdivision, a single lot minor subdivision, a major revision

600 plat and a lot size waiver for four lots. This is a fairly complicated project. This  
601 property has a total of twelve (12) existing dwellings. All of the dwellings are  
602 occupied and have separate addresses. County staff, the Health Department and  
603 the State Highway Administration made numerous site visits to the property. The  
604 applicant was able to find a series of sewage disposal areas (SDAs). Our  
605 methodology going forward is to see the least disturbance to agriculture lands as  
606 possible both from taking land out of agriculture and recognizing that Route 333  
607 is a scenic byway. We want to see the applicant use existing roadways and private  
608 roads to the greatest extent possible. We are working with the applicant to  
609 minimize lot size to the greatest extent possible.

610  
611 One of the proposals on Lot C is a five lot subdivision. There are six dwellings of  
612 fairly deplorable condition. The applicant would like to give Deed Parcel A  
613 riparian rights to construct a house near the water where there are already two  
614 small bungalows. This is a two step process. It is a major revision plat, revising  
615 the lot lines, and a subdivision. Before this can be approved the applicant would  
616 have to either remove the existing dwellings, or if the dwelling is under nine  
617 hundred square feet in size, and is not within the shoreline development buffer,  
618 they would have the ability to convert it to an accessory residential structure in the  
619 RC zoning. Under normal circumstances you cannot create riparian access as per  
620 a revision plat. However you can do it under a subdivision. By revising the lot  
621 lines and creating a subdivision concurrently you are under the confines of state  
622 law.

623  
624 Mr. Rothwell stated staff is working with the applicant and has recommended a  
625 few reconfigurations to make this a better subdivision that meets the standards of  
626 the comprehensive plan and the *Talbot County Code*. As originally shown the  
627 applicant proposed a 9.98 parcel with a 100 foot wide pipe stem at the intersection  
628 of the private road. Staff has recommended that they take out the pipe stem. There  
629 is an intersecting driveway which serves both houses. We would rather not see a  
630 new farm lane be created. We would rather create a shared access agreement.

631  
632 Lot 1 as initially proposed was twenty acres exactly. It was bounded by an  
633 existing farm lane which serves three existing dwellings, has tidally influenced  
634 wetlands, and there are 10-12 acres under tillage. Staff has recommended that this  
635 twenty acre lot be reduced down to the an area of around the 6-7 acre range and  
636 keep as great of a portion as you can under agricultural tillage. This would be  
637 covered by a reserved land agreement.

638  
639 Mr. Callahan stated there is a lot of phragmites along the edge of the field and  
640 there is a deer feeder in the field near the head of the pond. That end of the field is  
641 so close to the pond that the tide comes up onto the farm fields and almost to the  
642 hedgerow. There is a herd of animals that lives in the marsh and comes out every  
643 night and eat crops. The tide burns the crops and there is salt spray. It is fairly  
644 narrow and you can make one pass to get in and out. By the time you are done  
645 feeding the animals you really don't have much tillable ground there. The farmer

646 who is tilling the ground now said that it is unlikely he will continue to till that  
647 area.

648  
649 Mr. Rothwell stated the applicant has the ability to be able to utilize that  
650 development right. There is nothing in the Comprehensive Plan or the Code which  
651 says the applicant has the inherent right to maximize the real estate potential. If it  
652 is a twenty acre lot it is not going to be in agricultural production any more. You  
653 can kill agriculture just as easy with a twenty acre lot.

654  
655 Mr. Rothwell stated there were a couple of other recommendations. The existing  
656 farm access road which serves the three existing dwellings cuts at a 90 degree  
657 angle. County roads standards require a much softer turn. There are also some  
658 wetlands that should be avoided. Keeping this road would be utilizing an existing  
659 road to the greatest extent rather than creating a new subdivision road.

660  
661 Mr. Rothwell stated that for a small scale subdivision the ability to require street  
662 tree planting lies with the Planning Commission. Two rows of mature trees create  
663 the alley effect. We think it would be appropriate to create this on Winfield Drive.  
664 The applicant stated they would be comfortable with that as well.

665  
666 Mr. Callahan stated they have obtained the location of the perk tests, they are on  
667 the highest locations on the farm. The cottage at the very north point of Long  
668 Point has a functioning septic system. He stated they have provided floor plans of  
669 all existing structures and conditions of existing septic systems to the Health  
670 Department. On Lot 1 the intent is to keep the small house, build a new septic and  
671 abandon the existing septic. Commissioner Sullivan stated there are three other  
672 houses on that lot. Mr. Rothwell stated they would be required to remove those.

673  
674 Mr. Callahan stated he wanted to go over what would be done with the houses.  
675 Existing small house on Lot 1 have a new septic system built and connect. Lot 2  
676 has two houses, one house has to come out, either tear out or disconnect from  
677 septic and turn into a storage shed. A new septic system to be built on Lot 2.

678  
679 Buffer establishment rules for platting a new lot around an existing structure are  
680 significant. If we simply plat a lot around an existing house the buffer  
681 establishment requirements are only that we have to plant forest cover equal to the  
682 impervious surfaces outside the buffer on the lot we create. Money we won't have  
683 to spend to plant trees we use for a septic system. So we propose a new lot, no  
684 house, bond it now and establish it later. There is not much real land, there is  
685 marsh, and it is marginal for agricultural. He stated that Winfield Farm Lane with  
686 restructuring can become a good road.

687  
688 Mr. Callahan stated Lot 4 has an approved SDA, frontage on the existing private  
689 road and also frontage on a proposed private road. There is a small house and well  
690 that the County has asked to have removed. He stated they would like to keep the  
691 well for farm use.

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Mr. Callahan said on Lot 5 the 200 foot buffer cuts into the SDA. He has some work to do, they might need to expand. He stated they might have to abandon the drainage easements. There is some work to do on this lot.

Mr. Callahan stated there has been a discussion of allowing a parent parcel to have a 100 foot setback from mean high water. He presented a copy of a document from the Blue Ribbon Critical Area Committee to the Planning Commission allowing the parent parcel to have a 100 foot setback. So this is a great example of upgrading an older farm, getting rid of twelve houses, getting rid of twelve marginal septic systems, and putting in seven septic systems. You are not supposed to create nonconforming uses when you do so. If Parcel C is the parent parcel and if Lot 5 can have a 100 foot setback, the building envelope would open up.

Commissioner Boicourt stated he understands his position and the Commission did recommend this position. Commissioner Sullivan stated he thought Parcel 7 was the parent parcel. Mr. Rothwell stated there were three parent parcels.

Mr. Callahan said Lot 6 comes from old Parcel A from the original plat. The best use would be to make this a waterfront lot, so he stated they are proposing a lot revision. Mr. Callahan stated both lots are currently conforming. Mr. Rothwell stated the lots do not both conform because one of the lots has six dwellings. If you take all but one dwelling it will be a conforming dwelling.

Mr. Rothwell stated with the shared access easement it can share only two lots of record. The private road might have to be extended by approximately one hundred feet to resolve this problem. Mr. Callahan stated there is a lot of work to do, there is maybe 15% impervious forest cover requirements. We are going from twelve to seven lots and using seven units of density.

Commissioner Councill stated he believes in property rights, but his goal is to preserve agriculture to the degree possible. He reviewed the plat with Mr. Callahan and discussed some of the lot lines in the proposed subdivision plat and explained from a farmer's point of view how the lines being crooked make it hard for a farmer to farm, if it was straight it would be easier. Commissioner Sullivan reviewed where lot three could be slightly reworked.

Mr. Richard Osborne, Managing Partner on this venture, stated there is a tidal (drain) creek on Lot 1. So you are taking farm equipment across this drainage ditch, you then have soil coming up. Then you have farm equipment coming up across this line across somebody's lot.

Commissioner Boicourt stated he wants to be completely convinced that this is not workable land. Commissioner Councill stated as farmers, we try to worry

737 about our neighbors, some application equipment is up to 120 feet wide, most are  
738 90 feet wide, most of the planters are even 40 feet wide.

739  
740 Mr. Callahan stated his next move is to go to preliminary plat. Mr. Rothwell  
741 stated if the Planning Commission is comfortable with Lot 1 as proposed he  
742 would suggest establishing a building envelope and have that be recorded on the  
743 plat.

744  
745 Commissioner Boicourt asked for public comment.

746  
747 Mr. Greg Gannon, Easton, Maryland, stated he did not expect to speak. He found  
748 it interesting the conversation regarding Lot 1. He said it was a pleasure to visit  
749 the property last week. He, his brother, son and nephew had discussed how that  
750 lot would be inconvenient to them. He is all for utilizing rights and maintaining as  
751 much agriculture as possible. He stated this lot configuration makes sense in this  
752 instance.

753  
754 Commissioner Fischer asked if we have approved other twenty acre parcels? Mr.  
755 Rothwell stated the subdivision right next to it has two lots between 20-30 acres  
756 approved in the early 2000s. Mr. Callahan stated they did show on the red line  
757 plan that the lot is 19.775, we did pull the lot closer to the SDA. Mr. Showalter  
758 stated that they would still need a lot size waiver.

759  
760 Mr. Jackson stated he lives off Oxford Road now and has been driving past this  
761 farm for years. When he looked at purchasing he went to and talked with the  
762 neighbors. They are trying to make this property look better. Their goal is to make  
763 what you see when you go down Oxford Road better than what you see now.  
764 They have gone to the extra effort.

765  
766 Mr. Rothwell stated the applicant plans to sell the individual lots, but they also  
767 plan to sell the remaining lands to a farmer. The remaining lands on Parcel C  
768 would be its own parcel and the remaining lands on parcel A would be its own  
769 parcel. Another option to consider would be to have the pipe stem end so that  
770 there would be one remaining lands parcel instead of two. Commissioner  
771 Councill stated if someone wanted to do a nursery or some small scale  
772 agricultural operation they could do that with a small parcel but not a large parcel.  
773 So that should be left up to the applicant.

774  
775 Commissioner Fischer stated that he too appreciates the value in preserving water  
776 views but there also is virtue in grand avenues of trees such as those that grace the  
777 entrance to this farm and many others in the County. Commissioner Boicourt  
778 stated he is not convinced it is necessary to have the additional trees. Mr. Callahan  
779 stated it does not necessarily have to be completely treed. You could have trees  
780 put in some areas but not along the complete area. Mr. Mertaugh stated from  
781 Oxford Road you can see the Tred Avon River and it would be a shame to block  
782 that view. Mr. Jackson said we are trying to make this better. To plant trees and

783 block the view of the Tred Avon is not making it better. After discussion it was  
784 agreed that the decision regarding the trees would not have to be made at this  
785 time.  
786

787 **Commissioner Sullivan recommended approval of the sketch small scale**  
788 **subdivision for Long Point Preserve, LLC c/o Richard Jackson, 5252 Long**  
789 **Point Farm Road, Oxford, Maryland 21654, a subdivision of lots 1-5, as**  
790 **modified during discussion, including a building envelope for Lot 1, with**  
791 **staff conditions being complied with, except item d.; Commissioner Fischer**  
792 **seconded the motion. The motion carried unanimously.**  
793

794 **Commissioner Sullivan recommended approval of the sketch major revision**  
795 **plat for Long Point Preserve, LLC c/o Richard Jackson, 5252 Long Point**  
796 **Farm Road, Oxford, MD 21654, extension of Long Point Private Road to**  
797 **driveway at Lot 5, shortening pipe stem, adding to the SDA for Lot 7,**  
798 **abandoning existing lot line between proposed Lot 6 and Lot 7;**  
799 **Commissioner Fischer seconded the motion. The motion carried**  
800 **unanimously.**  
801

802 **Commissioner Councill recommended to Planning Officer approval of the**  
803 **sketch minor subdivision, Lot 6, for Long Point Preserve, LLC c/o Richard**  
804 **Jackson, 5252 Long Point Farm Road, Oxford, MD 21654; Commissioner**  
805 **Fischer seconded the motion. The motion carried unanimously.**  
806

807 **Commissioner Councill moved to table the lot size waiver for Lots 1, 2, 5 and**  
808 **6, for Long Point Preserve, LLC c/o Richard Jackson, 5252 Long Point Farm**  
809 **Road, Oxford, MD 21654, Commissioner Fischer seconded the motion. The**  
810 **motion carried unanimously.**  
811

## 812 **5. Discussions Items**

813  
814 Ms. Verdery wanted to make sure all of the Commissioners have completed the course  
815 for Maryland Department of Planning. If you have not, please do so. If you have please  
816 provide the Department of Planning and Zoning with a copy of your Certificate.  
817

818 Ms. Verdery stated that on Monday evening the County Council would like to continue  
819 the Comprehensive Plan worksession from 4-6 p.m., the location is to be determined.  
820

## 821 **6. Staff Matters**

822

## 823 **7. WorkSessions**

824

## 825 **8. Commission Matters**

826

## 827 **9. Adjournment** – Commissioner Boicourt adjourned the meeting at 12:37 p.m.

828

829