

1 June 29, 2016



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

6 Wednesday, May 4, 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 - Absent
- 15 Paul Spies
- 16 Phillip "Chip" Councill
- 17

18 Staff:

- 19
- 20 Mary Kay Verdery, Planning Officer
- 21 Jeremy Rothwell, Planner I
- 22 Mike Mertaugh, Assistant County Engineer
- 23 Tony Kupersmith, Assistant County Attorney
- 24 Carole Sellman, Recording Secretary
- 25
- 26

27 **1. Call to Order**—Commissioner Boicourt called the meeting to order at 9:00 a.m.
28 Commissioner Boicourt explained there were only four (4) members of the Commission
29 present and that a tie vote is considered a negative vote. If any applicant chooses they can
30 withdraw without penalty until the next month.

31
32 **2. Decision Summary Review**—April 6, 2016—The Commission noted the following
33 corrections to the draft decision summary:

- 34
- 35 a. Line 268, change to read: "Commissioner Fischer stated that the Commission has
36 discussed the potential activity of solar arrays in the County on several occasions.
37 He asked if anything is being done."
- 38
- 39 b. Line 289, change to read: "Commissioner Spies questioned if you put in a solar
40 array does the land maintain its preferential agricultural use assessment for
41 property tax purposes." Mr. Rothwell stated that he was not yet able to contact the
42 State Department of Assessments and Taxation as to answer this question.
- 43
- 44 c. Line 300, Commissioner Boicourt was not clear about the Public Service
45 Commission. Mr. Rothwell stated that to his knowledge, utility-scale solar
46 projects with a generation capacity greater than 70 megawatts are regulated by the
47 Maryland Public Service Commission (PSC). He stated that in these cases, the
48 County has an opportunity to comment and make recommendations to the Public
49 Service Commission, but explained that the PSC has the final authority to approve
50 these utility-scale solar projects. The PSC can thus, in certain instances, 'preempt'
51 the County's land use authority if it rules that the solar project, classified as a
52 power plant, is in the best interests of the State as a whole. Commissioner
53 Boicourt requested that this should be explicitly stated in the minutes.
54 Commissioner Fischer asked if the Planning Commission has any control over the

55 establishment of a plant. Mr. Rothwell stated the Planning Commission and
56 County Council can send a resolution to the Public Service Commission
57 recommending against the proposed project but that it does not have a binding
58 effect.

- 59
60 d. Line 384, Delete line: “This should be easier...”
61
62 e. Line 402, change to read: “Commissioner Fischer stated it is important for the
63 successful bidder to understand that Master Plans are intended to be governors of
64 development, not incentives. Delete second sentence.
65

66 **Commissioner Spies moved to approve the draft Planning Commission**
67 **Decision Summary for April 6, 2016, as amended; Commissioner Fischer**
68 **seconded the motion. The motion carried unanimously.**
69

70 **3. Old Business—None.**

71
72 **4. New Business**

- 73
74 a. Administrative Variance—Mr. & Mrs. Peter Ng, #A227—8562 Bozman Neavitt
75 Road, St. Michaels, MD 21663, (map 31, grid 4, parcel 106, zoned Rural
76 Residential), Keith Prettyman, Prettyman Construction, Inc., Agent.
77

78 Keith Prettyman, Prettyman Construction, Inc., appeared on behalf of Peter Ng.
79

80 Mr. Rothwell presented the staff report of the applicant’s request for the following
81 improvements:
82

- 83 1. To construct an attached 117.4 sq. ft. storage shed along the west face
84 (water side) of the primary dwelling, and over an existing impervious
85 porch to be removed. This improvement constitutes a 12.64% increase
86 in GFA of that portion of the existing dwelling within the Shoreline
87 Development Buffer.
88
89 2. To construct an approximately 262.5 sq. ft. covered porch to within
90 74.4 ft. of MHW; a portion of which is over an existing impervious
91 uncovered porch to be removed.
92
93 3. To construct an approximately 228 sq. ft. pervious deck to within 85
94 ft. of MHW.
95

96 There are a couple of existing porches on water side of house, within the
97 Shoreline Development Buffer, which are being removed. There is a new
98 pervious deck being proposed. There are some additions outside of the buffer.
99 This house has not had much done since the 1960s.
100

101 Mr. Prettyman stated the applicants have proposed to change the two-car garage
102 into the kitchen, and are now changing the rest of the house to flow with that.

103
104 Staff recommendations include:

- 105 1. The applicant shall make an application to the Office of Permits and
106 Inspections, and follow all rules, procedures, and construction timelines as
107 outlined regarding new construction.
- 108 2. The applicant shall commence construction on the proposed improvements
109 within eighteen (18) months from the date of the Planning Office’s ‘Notice to
110 Proceed’.
- 111 3. Natural vegetation of an area three times the extent of the approved
112 disturbance in the buffer shall be planted in the buffer or on the property if
113 planting in the Buffer cannot be reasonably accomplished. Disturbance
114 outside the buffer shall be 1:1 ratio. A Buffer Management Plan application
115 may be obtained through the Department of Planning and Zoning.
- 116 4. The applicant shall be required to replace the existing 538.3 sq. ft. impervious
117 deck with a 384 sq. ft. (or lesser size) pervious deck as shown on the site plan.
- 118 5. The applicant shall be required to construct the 228 sq. ft. deck as a pervious
119 deck as shown on the site plan.
120

121
122 Commissioner Boicourt asked for public comments; none were made.

123
124 **Commissioner Cuncell moved to recommend to the Planning Officer to**
125 **approve the administrative variance for Peter Ng, 8562 Bozman Neavitt**
126 **Road, St. Michaels, Maryland, for a storage shed, covered porch and**
127 **pervious deck; provided compliance with staff recommendations occurs,**
128 **Commissioner Spies seconded. The motion carried unanimously.**
129

- 130 b. Administrative Variance—Peter M. Rouse, #A228—4761 Bonfield Manor Road,
131 Oxford, MD 21654, (map 53, grid 8, parcel 92, zoned Rural Conservation),
132 Elizabeth Fink, Fink, Whitten & Associates, LLC, Agent.
133

134 Mr. Rothwell presented the staff report of the applicant’s request for the following
135 improvements:

- 136 1. To construct an approximately 142 sq. ft. screened porch over an existing
137 impervious deck to within 53.7 ft. from MHW.
- 138 2. To construct approximately 51 sq. ft. of porch stairs over an existing
139 impervious deck to within 61.6 ft. of MHW.
- 140 3. To construct a first-floor bay window on the southwest face of the primary
141 dwelling consisting of 13 sq. ft. of additional GFA, and to within 83.7 ft. of
142 MHW.
- 143 4. To construct a second-story dormer window, which will increase the GFA by
144 approximately 33.75 sq. ft.
145
146

147 All of the proposed improvements are over existing impervious surface. Mr.
148 Rothwell stated that the applicant paid an architectural historian to document this
149 house late last year. He explained that by documenting the house through the
150 Maryland Inventory of Historic Properties with the Maryland Historical Trust, the
151 applicants obtained an exemption from the County Floodplain Management
152 Ordinance, and are thus not required to raise the house above the base flood
153 elevation.

154
155 Staff recommendations include:

- 156
157 1. The applicant shall make an application to the Office of Permits and
158 Inspections, and follow all rules, procedures, and construction timelines as
159 outlined by regarding new construction.
- 160 2. The applicant shall commence construction on the proposed improvements
161 within eighteen (18) months from the date of the Planning Office's 'Notice to
162 Proceed'.
- 163 3. Natural vegetation of an area three times the extent of the approved
164 disturbance in the buffer shall be planted in the buffer or on the property if
165 planting in the Buffer cannot be reasonably accomplished. Disturbance
166 outside the buffer shall be 1:1 ratio. A Buffer Management Plan application
167 may be obtained through the Department of Planning and Zoning.

168
169 Pamela Gardner, an architect in Easton briefly expanded upon Mr. Rothwell's
170 staff report. The property is a historic property and the residence is almost entirely
171 within the one hundred foot buffer. What they are proposing are four modest
172 changes to the home to make it more livable. They are putting a window seat in
173 the master bedroom, some steps out of the sun room and adding a small screen
174 porch. On the second floor they are adding a shed dormer to the master bedroom,
175 which has a low ceiling height and poor lighting. They are getting rid of the
176 existing impervious deck which will reduce lot coverage. The new screen porch
177 will be an improvement to the property.

178
179 Commissioner Boicourt asked for public comments; none were made.

180
181 **Commissioner Fischer moved to recommend to the Planning Officer to**
182 **approve the administrative variance for Peter M. Rouse, 4761 Bonfield**
183 **Manor Road, Oxford, Maryland, provided compliance with staff**
184 **recommendations occurs, Commissioner Councill seconded the motion. The**
185 **motion carried unanimously.**

- 186
187 c. Michael Kemp and Laura Murray—2195 Quail Run Drive, Trappe, MD 21673
188 (map 62, grid 10, parcel 81, Lot A, zoned Rural Conservation/Agricultural
189 Conservation), Bill Stagg, Lane Engineering, LLC, Agent.

190
191 Commissioner Boicourt recused himself from this project.

193 Mr. Rothwell presented the staff report. This is a single lot subdivision and single
194 lot subdivisions do not require Planning Commission approval. But since this
195 project requires a Lot Size Waiver this is before the Commission.
196

197 Almost all of the property is in the Critical Area. The house was constructed in
198 2001, and a garage was also constructed. There is an intermittent stream which
199 bisects this property. There is only one Critical Area development right. There is a
200 little over 20 acres in the Critical Area. There are a couple of Agricultural
201 Conservation development rights on that portion of the property outside the
202 Critical Area. What the applicant is proposing is to create a Sewage Disposal Area
203 outside the Critical Area on Proposed Lot 2 using an Agricultural Conservation
204 development right. All of Proposed Lot 2 within the Critical Area on the new lot
205 would be placed in a Reserved Land Agreement. Staff felt that using an existing
206 intermittent stream as a lot-line boundary made the most sense and would make
207 for a better designed lot in keeping with the intent and design standards set forth
208 in the Talbot County Code.
209

210 Staff recommendations include:
211

- 212 1. Address the April 13, 2016 TAC comments from the Department of Planning
213 & Zoning, Department of Public Works, Environmental Health Department,
214 and the Environmental Planner prior to final plat submittal.
215

216 Mr. Stagg, Lane Engineering along with Laura Murray, one of the owners of the
217 property made a brief summary presentation. The proposed plan results in a better
218 design for the subdivision, and results in better land planning. Ms. Murray stated
219 the ravine is non-passable and would have required a large bridge to cross if you
220 wanted to access Lot 1 to Lot 2, so this avoids that problem.
221

222 Commissioner Fischer asked for public comments; none were made.
223

224 **Commissioner Cuncell moved to approve the Lot Size Waiver for Michael**
225 **Kemp and Laura Murray, 2195 Quail Run Drive, Trappe, Maryland, with**
226 **staff recommendations being complied with; Commissioner Spies seconded.**
227 **The motion carried unanimously.**
228

229 Commissioner Boicourt returned to the meeting.
230

- 231 d. Easton Hardscape and Landscape Supply—9740 Ocean Gateway, Easton, MD
232 21601 (map 25, grid 6, parcel 9, zoned General Commercial/Gateway Overlay
233 District), Barry Griffith, Lane Engineering, Agent.
234

235 Mr. Rothwell presented the Staff Report for the Easton Hardscape and Landscape
236 Supply project. The property is located on Route 50 as you are coming into the
237 Town of Easton (from the north). It is in the Gateway Overlay District and subject
238 to the gateway ordinance on two state highways; Route 50 and Route 662. The

239 applicant is proposing to demolish an existing 3,054 sq. ft. commercial building
240 and two accessory storage outbuildings on the subject parcel. Applicant is
241 proposing to construct a 2,400 sq. ft. building and accessory aggregate bins to
242 establish a commercial hardscape supply business. It is classified as a “Building
243 and Supply and Lumber Yard” use under Talbot County Zoning Ordinance §190-
244 16. SHA has required the closing of two existing access points onto Route 50 and
245 expanding another existing access point onto Route 662.
246

247 Mr. Rothwell stated that given the uniqueness of this property, the applicant has
248 requested a series of five waivers, with the concurrence of staff. Four of them are
249 related to the Gateway Overlay District and the fifth one is a parking waiver.
250 Firstly, the applicants requested a waiver for the required sidewalk or sidewalk
251 easement along that portion of the subject parcel along U.S. Route 50. The second
252 waiver is related to the prohibition against asphalt parking and circulation areas
253 within the 40 ft. Buffer Yard. The third waiver is for the required placement of
254 street trees for an approximately 90 ft. segment of the subject parcel along U.S.
255 Route 50 in the vicinity of the proposed submerged gravel wetlands. The fourth
256 waiver is related to the restriction permitting only one freestanding sign per
257 property in the Gateway Overlay District. The applicant proposes to emplace a
258 freestanding sign along U.S. Route 50, and a freestanding sign along MD Route
259 662. Lastly, under the terms of the Zoning Ordinance §190-128, the applicant is
260 required to provide ten (10) parking spaces, but is requesting a waiver for five (5)
261 of these required parking spaces.
262

263 Mr. Rothwell explained that this property has been in commercial use for decades.
264 There is an existing 3,000 square foot block building which is in disrepair. There
265 is an existing right turn exit onto Route 50 which has been abandoned and has a
266 guard rail around it, as well as a right turn in entrance from Route 50 which is still
267 in use. At the pre-application meeting, SHA required that the applicant abandon
268 the remaining U.S. Route 50 entrance, and expand and direct all traffic through
269 the existing entrance onto MD Route 662 on the opposite side of the property.
270

271 Mr. Rothwell explained that U.S. Route 50 is raised about ten feet or so above the
272 grade of the parking area on the subject property. Even putting a sidewalk
273 easement would be very difficult because of the steep slope. The applicants are
274 proposing to construct a submerged gravel wetlands to comply with the
275 stormwater requirements. Staff has directed the applicant to put a ten foot
276 sidewalk easement along Route 662 in anticipation of the hospital being
277 constructed. Given the grading factors, Staff would recommend against a
278 sidewalk or even a sidewalk easement along U.S. Route 50. To comply with the
279 street tree requirements, the applicant has proposed planting street trees along
280 both sides of the property (along both Route 50 and Route 662). Given the
281 location of the submerged gravel wetlands, and not wanting to interfere with the
282 stormwater management feature, the applicant has removed those trees and
283 replaced them with shrubs. Commissioner Fischer stated he did not understand
284 how trees would interfere with the submerged wetland. Mr. Mertaugh stated the

285 root mass and the slope were complicating factors. There is always concern if the
286 tree goes down it will take the slope with it. Mr. Mertaugh explained that there is
287 a PVC liner and there is concern if the tree will survive so close to the liner.
288 Commissioner Fischer stated the idea of street trees is to screen the building. Mr.
289 Rothwell stated vegetation has two purposes: to screen something or to enhance a
290 feature.

291
292 Mr. Rothwell stated the applicant is proposing to retain all of the asphalt
293 circulation and parking areas. By the terms of the gateway ordinance you are not
294 permitted to have parking within the buffer yard. In this case it is almost
295 impossible because you have the buffer yard on both sides. Concerning the
296 parking waiver staff wants, at a minimum, to accommodate the proposed number
297 of employees. The five spaces will include the employees and a couple of extra.
298 Given the nature of their business and their business model, most of their business
299 is going to be larger trucks. Staff will thus support the requested parking waiver.
300

301 Concerning the free standing sign, this is a unique circumstance, in that they front
302 two state highways. The Planning Commission has the final authority for the
303 requested signage waiver.
304

305 Staff recommendations include:
306

- 307 1. The applicant shall be required to remove the channelized right-turn-in and
308 right-turn-out entrances onto U.S. Route 50, and emplace guiderail in its place
309 as recommended by SHA.
- 310 2. The applicant shall be required place a 10 ft-wide sidewalk easement along
311 that portion of the subject parcel fronting MD 662, and record said easement
312 in the Talbot County Land Records
- 313 3. Address the April 13, 2016 TAC comments from the Department of Planning
314 & Zoning, Department of Public Works, Environmental Health Department,
315 Talbot Soil Conservation District, and the State Highway Administration
316 (SHA) prior to CRM submission.
- 317 4. The applicant shall commence construction on the proposed improvements
318 within twelve (12) months from the date of final approval.
- 319 5. The applicant shall make applications to and follow all of the rules,
320 procedures, and construction timelines as outlined by the Office of Permits
321 and Inspections regarding new construction.
322

323 Barry Griffith and Jarrett Beyer of Lane Engineering, LLC, and David Kirschner
324 of Patuxent Companies, and Pam Gardner, Project Architect, appeared on behalf
325 of the applicant.
326

327 Mr. Griffith stated they have submitted the site plan, gone through the TAC
328 meeting process, worked through issues related to storm water management. The
329 State Highway gave comments concerning access saying they want the two
330 entrances onto Route 50 removed, culverts taken out, the ditches to remain, and

331 guard rails installed. Mr. Griffith stated they wholeheartedly agree with not
332 having a sidewalk on Route 50. He understands there may be a need for a future
333 sidewalk on Route 662. They will move some of the trees back and will keep a
334 ten foot wide easement strip clear. He stated that concerning the parking within
335 the Buffer Yard, they already have pavement up to the property line. They are
336 taking out half of the pavement but want to keep some to help with circulation.
337 They have a septic replacement area on the southern portion that has to be kept
338 clear. Mr. Griffith stated they could have expanded to the east but they wanted to
339 stay within the existing footprint. The street tree requirement, it would probably
340 be advantageous to have those trees out. There is no storm water management
341 now. Mr. Griffith stated they would like to propose screening along the fencing
342 with some shrubs, a mix of evergreen and deciduous flowering shrubs. There is a
343 vinyl coated chain link fence, and a white opaque vinyl fence plus the landscaping
344 you will see in the gravel wetland.

345
346 Mr. Griffith would like the Commission to consider in their street tree waiver, to
347 remove those proposed street trees near the existing septic field. The Health
348 Department requested them not to have trees near the drain field. In place of those
349 trees they would like to put a row of evergreen shrub at the fence so you will not
350 just be looking at a fence.

351
352 Mr. Griffith stated in terms of the parking, this is an area where people will come
353 in load carts, load trucks and leave. This is not a situation where customers will
354 park and browse, like in a retail building supply store.

355
356 Mr. Griffith stated one of the issues we discovered at TAC is that the building was
357 a little too high. Pam Gardner has made some changes to the building. It is
358 essentially the same building, just a little shorter. Commissioner Councill asked if
359 this plan would allow them to get their trucks up and lock them. Mr. Griffith
360 stated it would.

361
362 Commissioner Fischer asked if there is a follow up on vegetation? Ms. Verdery
363 stated that applicant is required to submit a plan and Ms. Deflaux follows up on
364 vegetation survivability. Mr. Griffith stated that in February they spoke with Staff
365 about not having a Forest Conservation planting because of the airport, and it was
366 agreed.

367
368 Commissioner Spies asked if the location of the sign is not going to allow
369 customers enough time to turn? Will they need to remove more trees? Mr. Griffith
370 stated these are estimated locations, the important factor is to have the two signs.
371 They will figure out and adjust with the landscaping for the best placement of the
372 signs. Commissioner Spies stated that two signs are appropriate, just make sure if
373 you have to cut some trees to allow for viewing of the signs in time to make the
374 turn.

375

376 Commissioner Boicourt stated that once the canopy is up you will be able to see
377 the signs fairly easily. He stated he agreed with Mr. Spies about the flexibility of
378 the signage. Commissioner Boicourt stated he likes the sparser, more varied
379 screening along Route 50. Mr. Griffith stated one of the comments they heard
380 from TAC was that instead of the evergreens to go with more shrubs. Given the
381 proximity to Route 50 it would be better to have a variety.
382

383 Commissioner Boicourt stated one item Mr. Mertaugh had a question about is the
384 circulation of trucks. Mr. Mertaugh stated he was not entirely clear if all vehicles
385 entering the site will pass over the scale or if there will be a mix of two-way
386 traffic. He wondered if there would be a pinch point, is there enough room for
387 two-way traffic. Mr. Griffith stated they have run the turning radius for the type of
388 vehicles they believe will be in there. He stated that there will be two-way traffic
389 over the scale. That is why there will be a nice wide entrance. There is enough
390 room for two trucks to queue up to wait. People leaving will also have to wait and
391 go over the scale. It is a little tight but they have run the turning radius programs.
392

393 Commissioner Boicourt stated that with regard to the parking waiver there are two
394 purposes in his mind: one the operation of the people coming in; and two if this
395 building is sold and changes use, then you have a big asphalt parking lot out there.
396 He stated he is happy about the sidewalk waiver for Route 50, since it makes no
397 sense for a sidewalk to nowhere. It makes sense for a ten foot sidewalk easement
398 along Route 662. Commissioner Fischer felt replacing the trees with shrubs would
399 not be a good idea. He felt shrubs would be much more susceptible to the snow
400 and salt flying off of Route 50. Commissioner Boicourt stated it would be nice to
401 plant one big deciduous tree somewhere in the area of the storm water facility.
402 Mr. Mertaugh said looking at the site plan there might be room to put a tree in the
403 far right corner.
404

405 Commissioner Boicourt asked for public comment, and there was none.
406

407 **Commissioner Spies moved to approve the major site plan for Easton**
408 **Hardscape and Landscape Supply, 9740, Ocean Gateway, Easton, Maryland,**
409 **with all staff conditions being complied with; Commissioner Fischer**
410 **seconded the motion. The motion carried unanimously.**
411

412 **Commissioner Spies moved to approve the Gateway Overlay District waivers**
413 **for: sidewalks along U.S. Route 50; asphalt parking and circulation area in**
414 **buffer yard; signage along U.S. Route 50 and U.S. Route 662; and street trees**
415 **along portions of U.S. Route 50 and U.S. Route 662 for Easton Hardscape**
416 **and Landscape Supply; Commissioner Cuncell seconded the motion. The**
417 **motion carried unanimously.**
418

419 **Commissioner Spies moved approved the Parking Waiver for Easton**
420 **Hardscape and Landscape Supply, Commissioner Fischer seconded the**
421 **motion. The motion carried unanimously.**

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Ms. Verdery asked to amend the agenda since representatives from the Town of Oxford were in attendance and start with the annexation.

- e. Annexation Zoning Waiver Request—4649 Bachelors Point Road, Oxford, MD 21654 (map 53, parcel 128, Lot 1)

Ms. Verdery stated that the applicant is requesting that the Talbot County Council waive the County zoning requirements for the proposed annexation into the Town of Oxford. This is a single residential parcel with a failing septic system that would like to be annexed into the Town of Oxford for the purposes of being served by the community sewer system. The property is 1.893 acres located on the east side of Bachelors Point Road. It abuts the town boundary to the west. The parcel is zoned RR – Rural Residential in the County. The town zoning would be R1 - Residential. The two districts permit the same type of land usage. But the significance in the comparison of the density in the lot size for the County is two acres minimum and in the town is 10,000 square feet. The maximum lot coverage in the County is 15% whereas in the town it would be 40% based on the R1 zoning.

Ms. Verdery stated that for annexations, Counties are tasked with reviewing the provisions of the five year rule in determining whether a proposal is consistent with the County zoning or if not the County will be willing to waive its zoning requirements. Based on the significant difference in lot size and density and intensity we have the opportunity of imposing the five year rule. To address the five year rule, the County zoning requirements must be determined and compared to the town zoning. The proposed zoning would vary considerably from the County zoning in intensity with a four dwelling unit per acre versus one per five acres, and a greater than fifty percent increase in lot coverage. Therefore the proposed zoning will require a waiver from the County. The County Comprehensive Plan designates the parcel within Oxford Designated Growth Area. The Plan states in its discussion of municipal growth areas that annexation and development within a Designated Growth Area should occur on incremental basis with those properties closest to the town receiving the highest priority for annexation and development. Leap frog development of properties in the outer perimeter of the designated area at low septic system densities shall be avoided as not to produce isolated County enclaves within town borders. There was a question in regard to this property as it sticks out to itself and it will be surrounded to the north and south by County, but it will not create an enclave as it is proposed.

Ms. Verdery stated that 4659 Bachelors Point Road is subject to a “Declaration of Covenants, Conditions, and Restrictions for Bachelors Point Homeowners Association, Inc. as recorded in Liber 645, Folio 506 of the County Land Records. Article VIII, Use and Maintenance Restrictions, Section 8.2.11 states: “No lot shall be subdivided; provided however, this shall not prohibit transfers of

468 parts of Lots between adjoining Lot Owners where the transfers is not for the
469 purpose of creating a new building lot.” So they are restricted under their
470 covenants from subdividing, even though being annexed into the town will
471 provide a greater flexibility for that. Our recommendation is that the use is and
472 will be single family residential, and the parcel is restricted from subdivision by
473 restrictive covenants regardless of density, staff recommends that the Planning
474 Commission favorably recommend the zoning waiver to the County Council.
475

476 Ms. Bryna Booth, Oxford Town Attorney and Anne Walker, one of the property
477 owners appeared before the Commission. Ms. Booth stated this is a relatively
478 simple annexation request to address a failing septic. They have spoken with the
479 Health Department and with Ray Clarke. The town is in the process of getting
480 ready to construct an ENR wastewater treatment system, hopefully in September.
481 The Walker’s decided it made sense for the County and the environment to use
482 that system. She stated they would request a waiver as they would put the
483 property in the lowest density zone the Town of Oxford has.
484

485 Commission Spies confirmed the neighboring properties are similar properties.
486 Ms. Booth stated they are and letters were sent out asking if any of them would
487 like to come into the town at this time. None of them did.
488

489 Commissioner Boicourt asked for public comments there were none.
490

491 **Commissioner Fischer moved to recommend to the County Council to waive**
492 **the five (5) year hold on the proposed annexation, 4659 Bachelors Point**
493 **Road, Oxford, Maryland, Tax Map 53, Parcel 128, Lot 1; Commissioner**
494 **Councill seconded the motion. The motion carried unanimously.**
495

496 f. Review of Large-Scale Solar Array Projects
497

498 Mr. Rothwell stated he checked around to see what some of the other counties on
499 the Eastern Shore have in place for the review of commercial solar projects. Some
500 counties do not have anything in place as of yet. As far as the development review
501 process, all of the counties have separate definitions. In most instances in
502 neighboring counties, large commercial solar projects require a special exception
503 or conditional use from the Board of Appeals. Worcester County has probably the
504 most comprehensive ordinance language; they break solar projects down into four
505 categories: very small - 5KW or less, then small, medium, large, and lastly a
506 separate process for ‘utility-scale’ solar projects. The small and the medium solar
507 projects can be approved administratively by permit, or through their
508 administrative site plan process. The large solar projects require major site plan
509 approval by the Planning Commission. The utility-scale solar projects require an
510 approval process similar to our STAR legislation, which requires a master plan to
511 be approved by the Board of County Commissioners. Commissioner Fischer
512 stated he thought we lost control of large projects to the state. Mr. Rothwell stated
513 Worcester County’s utility scale review process is for projects of 2.5 Megawatts

514 or more gives the County the ability to provide individualized guidance and
515 analysis on the effect of proposed solar projects on the surrounding community,
516 and require the necessary mitigation. In practice, those solar projects of 15 acres
517 or more fall into this category. The 2 acre to 15 acre 'large' solar projects require
518 major site plan approval from the Planning Commission. Commissioner Fischer
519 stated these are various options to how to handle this. His concern is whether we
520 can make time for the County to develop and get a plan in place, meet with
521 experts, and with the County Council to get this done right. The County currently
522 does not have any regulations or design standards in place, which puts the County
523 at risk. Mr. Rothwell stated he can go through now in greater detail how some of
524 the different counties regulate solar energy projects if that is what the
525 Commission wants. Commissioner Boicourt would endorse sending this analysis
526 to the County Council and requesting a task force for a moratorium.
527

528 Mr. Rothwell stated Kent County has been through this process twice; they
529 created a task force that looked at solar and wind in 2010, and they instituted their
530 first solar ordinance in 2010-2011. They created a task force in 2015 which met
531 for six months and they are getting ready to release their findings to the Board of
532 County Commissioners in a couple of weeks. Commissioner Spies asked if there
533 was any information on the case of a one hundred acre solar array installation, and
534 whether the land would still maintain its preferential agricultural use
535 classification. Mr. Rothwell stated the Assessments Office would have to make
536 that decision.
537

538 Commissioner Councill stated that would have to be one of the safeguards. While
539 we might not have control over the approval of a utility size solar project, the
540 County can still impose conditions that would have to meet as far as setbacks,
541 screening, height, etc. There is an interesting article on how North Carolina
542 regulates solar energy projects, which is accessible through Google.
543 Commissioner Councill stated he is not opposed to what he would consider solar
544 arrays as an accessory use, as compared to a principal use. His question is, from a
545 utility standpoint, can the County still control them through setbacks, etc.?
546

547 Mr. Rothwell stated if the County were to put in a series of design standards in
548 terms of regulating the placement of commercial solar facilities, even if the
549 project went above the threshold of what classifies as a power plant, that is it
550 provides conditions the state can use during their review. The County can
551 stipulate design standards we want commercial solar arrays to meet, including
552 minimizing its disturbance to agricultural lands, or requiring minimum setbacks,
553 or screening requirements. This gives the State (PSC) better guidance to weigh in
554 on in reviewing commercial solar projects in the County. The more supporting
555 language that is put into the Comprehensive Plan and the Zoning Ordinance the
556 more likely that the County's review process and decisions will be held up by the
557 PSC (and the courts).
558

559 Mr. Rothwell stated that the General Assembly created a new definition under
560 COMAR for Community Solar Energy Systems. He sent this to Mike Pullen to
561 find out how that changes our review process, if at all. In terms of how it is
562 classified, in terms of use from agricultural to commercial for property tax
563 assessment purposes, while the County levies a local property tax rate, the
564 Department of Assessments and Taxation is a state agency and the State has a
565 uniform methodology for appraising properties across the state. If you have 200
566 acres in agriculture and you take 100 acres out of production, you in theory
567 should have to pay agricultural transfer tax to the state. Commissioner Fischer
568 said we should be able to look at some of the Counties that have these arrays and
569 find some examples of where this has been implemented one way or another. Mr.
570 Rothwell stated you will not necessarily be able to tell how the property is
571 assessed without calling the Assessments Office. Ms. Verdery stated Martin is
572 looking into that information as well. Commissioner Boicourt stated there is a
573 consensus regarding the impending aspects of this. He felt there should be
574 communication from the Planning Officer to the County Council sharing Jeremy's
575 report, discuss the agricultural tax issue, and concerns about the Public Service
576 Commission's control. He stated that in his opinion, the 100-200 acre and up solar
577 installations are not consistent with our vision set forth in the Comprehensive
578 Plan. Commissioner Fischer stated we currently do not have an application in
579 front of the Planning Commission, but if they were to get one next week, the
580 County does not have any standards in place, making it difficult to look at it and
581 review. He asked if it was possible to get a moratorium in place, which would
582 allow time for legislation to be written. Mr. Kupersmith stated a moratorium was
583 used for the wind turbines and the cell towers. This seems like a similar issue, you
584 have concerns with the large solar arrays, glare, aesthetics, loss of farm land.
585 Since there are a variety of different approaches taken by different counties, there
586 seems to be room for debate as to what the correct approach is, and how you want
587 to do that, so you could do some sort of moratorium. Whether the moratorium has
588 an impact on Public Service Commission review at the state level for utility scale
589 projects that is not clear. If the State has sole authority to approve these utility
590 scale solar projects, then a local moratorium may not preempt that.

591
592 Commissioner Fischer stated that a moratorium should be put in place soon. Once
593 we have something in front of us it is very difficult to establish a moratorium.
594 Commissioner Boicourt stated once precedent is set it is hard to reverse.
595 Commissioner Spies stated the hundred acre solar projects are going to be
596 difficult to stop, whoever builds that is going to have enough money and
597 connections to make it very difficult to stop that. But the twenty acre solar array
598 right next to farmland is almost as big an eyesore as the hundred acres. He stated
599 he is more concerned about the ten, twenty, fifty acre site that we do have control
600 over.

601
602 Ms. Verdery stated she had a conversation with Mr. Pullen, and they discussed
603 what the impacts would be and whether a moratorium could be imposed. He
604 stated it could be imposed, but the time frame and parameters had to be defined

605 for the moratorium. Kent County is doing a significant review and has developed
606 a task force. They are getting ready to develop a report later this month. We may
607 be able to use their information and see if that answers some of our questions ~~and~~
608 or if it does not answer our questions we may need to develop our own task force.
609 Commissioner Fischer stated we need to have a moratorium in place. He
610 questioned how quickly the County Council could meet to establish a
611 moratorium? Mr. Kupersmith stated the moratorium would require legislation,
612 and that it would have to go through the regular legislative process. A
613 councilmember would have to introduce a bill on a legislative day that outlines
614 the nature and scope of the moratorium. It would have to be advertised and have a
615 public hearing. Commissioner Fischer asked how soon we could have that
616 happen.

617
618 Commission Spies asked if we could make a motion to recommend to the County
619 Council to move forward with the legislation proposing a moratorium on solar
620 arrays in the County. Commissioner Boicourt stated we have the letter, we have
621 Mr. Rothwell's description which is great. He stated that totally relying on Kent
622 County would not be correct for us. We could get a small working group together
623 who would spend time on the issues. Ms. Verdery stated that Kent County might
624 have answered the bigger questions for us. Mr. Rothwell stated that Kent
625 County's preference is toward the protection of agricultural lands. In speaking to
626 Amy Murdock, Planning Director of Kent County, Mr. Rothwell stated that they
627 are looking to put a maximum acreage on the amount of agriculturally-zoned
628 farmland that can be converted to solar energy production. He does not know how
629 that is going to hold up legally.

630
631 Commissioner Cancell questioned if we were to recommend a moratorium, we
632 probably would want to do it on solar arrays over a certain size so as not to stop
633 installation of solar arrays as an accessory use. Ms. Verdery stated that there are
634 two solar projects on next week's Technical Advisory Committee agenda; one of
635 which has already obtained approvals from the Planning Commission and Board
636 of Appeals.

637
638 Mr. Rothwell stated regarding the accessory use solar facilities, we don't have
639 anything in the Code, but we have been classifying those solar projects with a
640 generation capacity of 100 KW or less as an accessory use requiring only a
641 building permit. In practice this includes those projects with less than one-half an
642 acre of solar panels. The first project is Shelvest, right off of Route 50. It went to
643 the Planning Commission for Site Plan approval and then to the Board of Appeals
644 for Special Exception. It has to go back to the Technical Advisory Committee and
645 then it will probably be approved at the end of the month if it goes to CRM, which
646 it is expected to do. The next project we have been working on is Theresa
647 Shortall's farm on Mullett Branch and Matthewstown Road. It is a 230 acre farm,
648 and the applicant is proposing between 7-8 acres of solar arrays. The applicant,
649 with the assistance of Tim Glass of Lane Engineering, has had a Pre-Application
650 meeting with staff last December. Staff believes the this is (as shown on the

651 screen) the most appropriate location for the solar arrays. It is set back
652 significantly from the road. This area is fifteen feet lower than the surrounding
653 area so you cannot see it from the road. There is an existing farm road so there is
654 access with a fenced pasture on one side and crops on the other side. Staff worked
655 with the applicant to minimize the disturbance to agriculture. Commissioner Spies
656 stated that this is a large project. He felt this should require the property owner to
657 pay an agriculture transfer fee. Commissioner Councill said this is a large farm,
658 he is very familiar with this farm and that is the best spot on the farm, everything
659 on that location makes sense. Commissioner Spies stated the land is coming out of
660 agriculture use and it is supplying more than that farms electrical use. He stated
661 he is comfortable with current usage plus 20% as what would be allowed. Mr.
662 Rothwell stated that different jurisdictions and MALPF use different
663 methodologies to define what is an accessory solar project that are designed to
664 power just one farm/property. Some of the Counties use does it supply energy to
665 your own particular property. Mr. Rothwell stated that a property's electric usage
666 may be different from month to month. It might be possible to recommend putting
667 a moratorium in place for any solar project over 100 kW.
668

669 Commissioner Councill stated we have to be careful because some of the
670 companies that have approached him say they can supply power to all of their
671 farms. Some farms have multiple locations so theoretically they could be
672 supplying for more than one location. Commissioner Boicourt stated the number
673 one issue is loss of farm acreage and secondly is the visual aspect. Mr. Rothwell
674 asked if they wanted to say greater than 100KW or no greater than two acres.
675 Commissioner Spies stated we cannot answer three major questions involving
676 these solar panel arrays. So to sit here and pass judgment without being able to
677 answer those questions, his point is a moratorium is fitting. Commissioner
678 Councill stated he sees this as one of the most important things they are going to
679 do in the future. Solar makes sense and he knows the electric companies are
680 charged by the State with doubling their green energy in the next few years.
681

682 Mr. Rothwell stated when O'Malley was in office there was a regulation that all
683 energy providers in the state have to provide 10% or 20% from renewable energy
684 sources. So this is driven by this state requirement and the state credit.
685 Commissioner Boicourt stated he did not know the size of the chicken houses but
686 that seemed to be a good opportunity. Commissioner Councill said that is a
687 landowner decision. Commissioner Councill said we should not limit projects
688 over already existing impervious surfaces.
689

690 Mr. Rothwell stated the other thing to consider is some Counties make a
691 differentiation between solar projects on agriculturally-zoned land and those on
692 industrially-zoned land. Kent County, for instance, does not place a size limitation
693 on solar projects in industrial districts. Kent County has two 100 acre solar arrays
694 on industrially zoned land. Commissioner Boicourt stated this appears to be an
695 issue that will likely be going to the legislature, and we should encourage our
696 County Council to put some pressure on Annapolis. Mr. Rothwell stated Senator

697 Hershey who represents the Upper Shore last year put a bill in to give certain
698 Counties in the state, Kent and Queen Anne’s, in particular, the ability to approve
699 or deny projects over the Public Service Commission’s decision. It did not go
700 anywhere. Commissioner Boicourt stated the consensus is to send a
701 recommendation to the County Council to consider a moratorium to study and to
702 formulate legislation. Commissioner Spies asked Jeremy for his recommendation
703 for a size. Mr. Rothwell suggested no greater than 100 KW and no greater than 1
704 acre in size. Commissioner Fischer asked when the next legislation day was. Ms.
705 Verdery stated that the next legislative day is May 24th. Mr. Kupersmith stated
706 new legislation had to be circulated a week in advance. Commissioner Councill
707 asked how a moratorium would affect the projects set to come before the Planning
708 Commission next month. Mr. Rothwell stated the legislation could be stated to
709 say if a project has received preliminary approval by a certain date that the
710 moratorium would not affect it proceeding to building permit or construction. Mr.
711 Kupersmith stated typically you would pick a date that would affect ongoing
712 projects and the more liberal interpretation would be to allow the projects that had
713 invested in preparing and moving forward to keep going, but you have to draw the
714 line somewhere. Unless and until they have received their permit and are breaking
715 ground they won’t have gotten vested rights in the project. Ms. Verdery stated she
716 would look at moratorium they placed for the cell tower and wireless, but she
717 believes if they had site plan approval they had been through the site plan process
718 were exempt from the moratorium. The Commissioners agreed that was fair.

719
720 **Commissioner Spies moved to recommend to the County Council that**
721 **legislation be enacted to impose a moratorium on solar arrays greater than**
722 **100 KW or greater than one (1) acre, or existing impervious surfaces, and**
723 **during the term to answer the questions on sizing, zoning and other**
724 **questions; Commissioner Fischer seconded the motion. The motion carried**
725 **unanimously.**

726
727 Ms. Verdery stated the staff would formulate this into a recommendation, add the
728 information provided by Mr. Rothwell and forward to the County Council.

729 730 **5. Discussions Items**

731
732 Commissioner Spies stated he noticed in his handouts there is a notice of a lack of
733 compliance with the landscaping around the current solar project. What happens with
734 that? Ms. Verdery stated that Ms. Deflaux is working with them to ensure that they
735 implement the approved landscape plan.

736
737 Commissioner Councill stated as a matter of interest he mentioned North Carolina, the
738 title was “Planning and Zoning for Solar in North Carolina”. It brought up some of the
739 overlying questions regarding accessory principal use, lot size, setbacks, height, bond for
740 removal. Commissioner Boicourt stated it is not just that there are good ideas out there,
741 but other jurisdictions are worried about this. Mr. Rothwell stated that at the last Eastern
742 Shore Planners Meeting this was a top area of concern. The Maryland Department of

743 Planning should be asked to provide a guide to local government stating what can and
744 cannot be done, the best practices. Commissioner Boicourt stated you want to be able to
745 create power for the needs of the community and we are very sensitive to that. However
746 in the process we are losing farmland and we are losing the sense of the rural character.
747 We are not anti-green, anti-alternative energy here, but we have to find an answer for
748 Talbot County.

749
750 Ms. Verdery explained there would be Comprehensive Plan public hearings on Tuesday,
751 May 10, 2016, 2:30 p.m. in the Bradley Meeting Room at 6:00 p.m. in the Library. It is
752 her understanding there were a few amendments proposed by the County Council. There
753 were some recommendations for the word “should” to “shall”, concerns about village
754 density.

755
756 Ms. Verdery stated that on May 10th would be the Floodplain Management Ordinance
757 public hearings. She had a meeting with the Council members and they were proposing
758 further amendments To clarify some items. We had recommended in the ordinance that
759 when you did a field survey of the topographic boundary if that was more restrictive than
760 the mapped special flood area you have to use that restrictive line. But the way our
761 Ordinance is written if you have area outside of the floodplain you have to go to that
762 location first and you cannot build within the special flood hazard area. The amendment
763 is proposed to encourage people to determine where that topographic line is, but not
764 prohibit them from doing the activity they want to do. You can still build between the
765 map line and that topo line, but you have to elevate, use flood vents and whatever is
766 required to build within the flood area. So you are not prevented from building within
767 that area but when you build is you have to meet the floodplain requirements. We have
768 put a little more language to clarify that process. Commissioner Fischer stated when the
769 sea level rises the disparity between those lines will grow. He stated he is not sure he
770 agrees with that, ten or fifteen years from that people building will have wet feet. Ms.
771 Verdery stated that now people are building where the line is on the map, they do not
772 have to do the extra work to figure out where the actual topo boundary is. They are
773 building in the space but are not in compliance. So what we are trying to do is let them
774 build in that area but be in compliance.

775
776 Ms. Verdery stated we have had approval and the Request for Proposal was approved for
777 a Working Waterfront grant to include the Master Planning process in the Tilghman and
778 the Bellevue area. The Council met and appointed a Commission member and a Council
779 member. They would like Mr. Boicourt to work with Tilghman and Mr. Council to work
780 with Bellevue, if there is any conflict with that they would like to know. They have
781 appointed a Council member but she was not aware who those members were at this
782 time. Mr. Rothwell stated they received nine proposals. They were all very good
783 proposals, each had their own priorities and methodology as to how they do outreach. He
784 wanted to have someone from the community on the interview panel and he had Kelly
785 Cox from Tilghman. The firm which they decided to select Lardner Kline and Heritage
786 Strategies as a co-team. Lardner Kline completed the Michener’s story of the Chesapeake
787 Scenic Byway Plan, and have completed other village plans for the Chincoteague,
788 Virginia Downtown Master Plan. They are bringing in a special coding expert to help

789 with some of the zoning issues and design issues. The Council approved the selection of a
790 citizens advisory committee for both villages, it is a pretty good cross-section of both
791 communities and has some outside community representatives as well. Ms. Verdery
792 stated they would provide the Commission with a list of the members. Mr. Rothwell
793 expects the first citizens meeting by late June. He hopes to have a charette sometime
794 around Labor Day.

795
796 Commissioner Fischer stated that at one time at the record of the Planning Commission
797 meetings were recorded as Minutes. When Sandy Coyman was Planning Director it was
798 changed to the Discussion Summary. He asked how the Commission would feel about
799 receiving Minutes again. It is a formal record of their work, a rough record. The
800 transcripts are always available. Commissioner Boicourt agreed but asked who was going
801 to do it. He asked if Commissioner Fischer was going to volunteer. Mr. Rothwell stated
802 that the downside of that is, that as a staff member, when looking back at some of the
803 Board of Appeals decisions for example, is trying to interpret what they were saying and
804 what their intent was, because there is not enough detail. Commissioner Councell stated
805 the Board of Appeals decisions is prepared by the Board of Appeals attorney and he
806 would hate to have the Commission go through that expense. Ms. Verdery stated that the
807 Council is the only body who gets a written transcript of every word they say and that
808 level of detail. All of our boards or commissions get a summary of decision. Sometimes
809 Commissioner Fischer feels in reviewing his decision summary I say well that does not
810 quite say it, but okay and I go on. Maybe that is the way to do it, just try to correct what
811 has importance over time. It does not make us look particularly coherent. Commissioner
812 Boicourt stated that was an accurate assessment. Commissioner Spies stated when we
813 were in the legal issue a year ago we talked about how there was going to be a more in-
814 depth write up of how our proceedings and how what we discussed were going to be
815 taken and submitted. Isn't there an ability to do what Commissioner Fischer is asking for.
816 Ms. Verdery stated whenever something is challenged we do forward that for an actual
817 transcript from a certified transcriptionist. When we need to provide it to court, Circuit
818 Court, Board or Appeals or something like that. Commissioner Fischer asked where the
819 Decision Summaries go. Ms. Verdery stated they stay in our office and are used a
820 resource. Commissioner Boicourt stated he is in favor of a summary. Ms. Verdery stated
821 that different Planning Officers have dealt with it differently. Commissioner Fischer
822 stated he was comparing the written record of our work with the Board of Appeals and
823 felt we were not measuring up. Commissioner Boicourt stated they had an assigned
824 writer. Ms. Verdery stated those minutes typically could be appealed. Commissioner
825 Boicourt stated he was very happy to have a volunteer, he wasn't hearing any volunteers.

826
827 Commissioner Councell stated there was a lot large plans and paper this month. Anytime
828 they could give smaller copies or go to electronic copies it would save money and time.
829 Mr. Rothwell stated he stressed that to the applicants.

830
831 Commissioner Boicourt stated he and Commissioner Fischer had been asked to do an
832 interview on the Comprehensive Plan and though he felt it came out all right. But in his
833 opinion it appeared to be about them, not about the Commission. And he felt there was no
834 recognition of the work the Staff had done. He wanted to apologize for that.

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6. Staff Matters

7. WorkSessions

8. Commission Matters

9. Adjournment–Commissioner Boicourt adjourned the meeting at 11:18 a.m.

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