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## MINUTES

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The Salisbury-Wicomico Planning and Zoning Commission met in regular session on February 16, 2012 in the Council Chambers of the Government Office Building, Room 301, with the following persons in attendance:

**COMMISSION MEMBERS:**

Charles "Chip" Dashiell, Chairman  
James W. Magill  
Gail Bartkovich  
Scott Rogers  
Tim Spies  
Jacob Day  
Newell Quinton

**CITY/COUNTY OFFICIALS:**

Henry Eure, City Building, Permits and Inspections Department  
Ed Baker, County Attorney

**PLANNING STAFF:**

Jack Lenox, Director  
Gloria Smith, Planner  
Mary Phillips, Technical Review  
Keith Hall, Planner  
Beverly Tull, Recording Secretary



The meeting was called to order at 1:30 p.m. by Mr. Dashiell, Chairman.



**Minutes:**

Upon a motion by Mrs. Bartkovich, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the minutes of the January 19, 2012 meeting as submitted.

*Mr. Magill abstained from the vote due to his absence at the last meeting.*



**#SP-9702-12E      SIGN PLAN AMENDMENT – Primo Hoagies – College Square Shopping Center – General Commercial District – M-115; G-15; P-2949.**

Mr. Michael Kennedy came forward. Mrs. Gloria Smith presented the Staff Report. The applicant has submitted a request for a Sign Plan Amendment for Primo Hoagies to be located in the College Square shopping center.

The applicant proposes a sign that from a distance will appear to be individual letters but will actually be raised letters on a raceway. This is a balloon sign rather than channel letters. In addition, a smaller box sign, "Old Fashioned Style" is proposed above the letter sign.

Mrs. Bartkovich questioned when Primo Hoagies would be opening. Mr. Kennedy responded that he hoped to open by the end of March.

Upon a motion by Mr. Magill, seconded by Mr. Spies, and duly carried, the Commission **APPROVED** the Sign Plan Amendment for Primo Hoagies, as submitted.



#### **COUNTY SUBDIVISIONS/SKETCH PLATS:**

##### **Boylston – Preliminary Plat – 11 Lots – Siloam Road – M-46; G-24; P-288.**

Mr. Steve Fuller came forward. Mrs. Gloria Smith presented the Staff Report. The applicant proposes subdivision of 11 lots from a 58 acre parcel. Average proposed lot size of the residential lots is 0.98 acres. All lots will have access and frontage on the southerly side of the proposed interior street. Parcel 1 will remain in agricultural production and Lot #2 will remain in agricultural production with access for the poultry houses provided on Siloam Road. Site constraints due to the existing poultry houses, wooded areas and existing dwelling would not allow for the residential lots to be any more centrally located than currently designed. There is an excess of Open space provided for this subdivision (43.35 acres) whereas, 29.2 acres are required.

Mr. Fuller stated that this project slipped by the radar for requesting an extension. The extension request was approximately nine (9) days late. The stormwater management has been approved. The Health Department has signed the original Final Plat for the percs. Forest Conservation has been approved.

Mr. Magill questioned if the Health Department comments were still valid. Mr. Fuller responded that they already have Health Department approval. The majority of the percs were one (1) to two (2) minutes. The soils are very sandy.

Mrs. Bartkovich questioned if the new septic bill would impact a project without final approval. Mr. Lenox responded that there will be a very specific grandfather clause for any subdivision submitted before July 1, 2012 and then subdivisions submitted after that date. Either way they are going to be required to record this much quicker than they would have under our provisions. Mr. Lenox stated that his understanding was that if they proceeded to final approval that they will record it either this December or next December. He wasn't sure of the exact time period that was involved with submitted before and approved and recorded. The action that the Council took relative to

subdivisions could start to conflict with the language at the State as they look to control the septic systems.

Mr. Dashiell requested that Mrs. Smith go over the Draft Findings of Fact. Mrs. Smith presented the Findings of Fact.

Mr. Spies questioned the open space percentage listed in Items 4 and 5 of the Findings as to whether it was 79 percent or 74 percent. Mrs. Smith responded that she would correct the Findings to show the 74 percent.

Mr. John Groutt, representing WET, questioned if the set aside area would ever be able to be developed. Mrs. Phillips responded that the set aside area is landlocked. Mr. Groutt stated that this area is poorly located for development. This area is zoned A-1 therefore it is zoned for ag use. This parcel is surrounded by ag and poultry houses. The proposed development would be sprawl in the ag district. There is an existing MALPF easement located nearby. The State has decertified the County's ag program. Mr. Groutt stated that if the Commission approved the Boylston subdivision, then they would be approving sprawl in the A-1 District. This would further justify the decertification of the State Ag Program. Mr. Groutt displayed an aerial of the area and showed where the MALPH easements are located. If Boylston is approved, it will break up the easements in the area. Subdivisions are a major obstacle in the ag district to try and preserve lands. Mr. Groutt discussed the Findings. The Commission is permitted to use discretion for the bonus density. The Findings side step many of the real issues. Item 5 discusses that the design is preferable to a conventional layout but this design isn't innovative or creative. Item 7 discusses preserving land. The converted land is into houses and pavements because the land is already forested and fields. The requirement is not met and it does not meet the requirements of the Code. Mr. Groutt discussed the new developments that include the WIP which is required by each County. There is a struggle to meet this court order. This development is contrary to the WIP. The County cannot expect the State to subsidize the WIP. Mr. Groutt requested that the Commission not rubber stamp this development. He requested denial of the subdivision.

Mr. Fuller stated that they were giving 35 acres into a permanent easement to the County. The poorest land is being used for the homes. There is very little chance of ag production on this area for the 11 lots. Mr. Fuller requested consideration for approval as he missed the extension deadline by nine (9) days and this subdivision already had approval.

Mrs. Smith explained that the MALPF program is strictly voluntary. Denying this subdivision does not mean that it is going to come into the Land Preservation Program. The parcels have to meet minimum soil requirements. The way that the State is ranking the criteria now, this would

probably fall more towards the bottom for money. In July 1, 2010 there were eight (8) applications in Wicomico County for 900 acres of land. The State only had enough money, after combining two (2) years of money to make an offer on one (1) easement in Wicomico County. This means that the other seven (7) landowners have to reapply.

Mr. Fuller stated that this parcel was originally 78 acres but the poultry houses were cut off and sold to someone who has continued that use.

Mr. Groutt requested to make a clarification. He stated that his argument wasn't that this would go into MALPF. One of the reasons that we had so little money to put towards easements was because we were decertified. We won't get the money and we will continue not to get the money.

Mrs. Smith explained that Mr. Groutt's information was not correct. Under the State program, they have a certain amount of funding and they allocate so much funding to each County and after combining the funding for two (2) years, they only had enough money to purchase one (1) easement. Decertification of our local program had nothing to do with that.

Mr. Groutt stated that we might have had County money if we hadn't been decertified. Mrs. Smith responded that at the rate we are accruing transfer taxes, no.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the Preliminary Plat for Boylston, subject to the following Conditions of Approval:

**CONDITIONS:**

1. The Final Plat shall comply with the Subdivision Regulations.
2. This approval is subject to further review for compliance with the requirements of the Forest Conservation Act.
3. Health Department approval is required prior to the recordation of the Final Plat.
4. The fifty (50) percent set-aside must be established by plat and deed.
5. Construction Improvements Plans as approved by the Department of Public Works shall remain unchanged.
6. A Homeowners Association shall be created to maintain the stormwater management facility, drainage and maintenance easements and forest conservation easements.
7. The Open Space along Siloam Road and a 15 ft. strip along Lot 3 shall be landscaped to buffer the development.

8. This approval is subject to further review and approval by the Department of Public Works.



**Boylston – Findings of Fact – 11 Lots – Siloam Road – M-46; G-24; P-288.**

Mr. Steve Fuller came forward. Mrs. Gloria Smith presented the Draft Findings of Fact for Boylston.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the Findings of Fact for the Preliminary Plat for Boylston.



**Knolls at Barren Creek, Section 2 – Preliminary Plat – 3 Lots – Mill Branch Road – M-17; P-186; G-5.**

Mr. Brock Parker, Mr. John McIntyre, and Mr. Jimmy Sarbanes came forward. Mrs. Gloria Smith presented the Staff Report. The applicants propose subdivision of 3 lots from this 14.03 acre tract. All lots front and have access on Mill Branch Road. In December 2011 the Commission reviewed a new sketch plat proposing three lots on Mill Branch Road. This was a significant reduction of a plat previously reviewed by the Planning Commission for a Chesapeake Bay Critical Area Growth Allocation request. The original sketch plat for the subdivision proposed 15 lots. Following a public hearing on January 15, 2009, that request received an unfavorable recommendation on February 19, 2009 and was denied by the Wicomico County Council on November 17, 2009. One minor lot was created for the existing residence on Athol Road. A subdivision plat creating Lots 2 and 3, Block A, was approved by the Commission in April 2010 and recorded in the Land Records in January 2012.

Mr. Parker explained that this project has an extensive history and he gave a brief history on the project. The parcel is zoned Town-Transition which is the most liberal district in the County. There aren't any new roads being built. The woods are being 100 percent preserved and some additional plantings are being done. The Critical Area Commission has approved this

project. The perc tests have been approved by the Health Department. All structures will be built outside the critical area portion of the property. The Health Department is ready to sign the plat. The proposal is three (3) lots on a 10 acre parcel.

Mrs. Bartkovich questioned when this project went before the Critical Area Commission if they reviewed the plat. Mr. Parker responded that Mr. Sharp did an in-house review. This project didn't go before the Commission because all the structures were outside the critical area. Mr. Lenox added that the Critical Area Commission does see the plan. They have approved the buffer management plan. The Critical Area Commission has sent notification stating that they are not opposed to this development.

Mr. Parker reiterated that there is no development being done in the critical area portion of the parcel.

Mr. Magill questioned Condition #5 as it pertains to the 100 year floodplain. Mr. Parker responded that it was a labeling issue and that everything has been lowered 1 ft. per the new Dfirm maps.

Mr. John Groutt, representing WET, questioned the number of lots. Mrs. Smith responded that this was a three (3) lot subdivision. Mr. Groutt stated that this was an iffy area. He questioned if the Commission would add a condition of approval requiring enhanced nutrient removal systems.

Mrs. Bartkovich questioned the type of septic system that the Health Department has approved for this subdivision. Mr. Parker responded that the Health Department had approved 2 ft. sand mound systems. Mrs. Bartkovich noted that the Commission cannot legally dictate the type of septic systems to be installed.

Mr. Sarbanes noted that the Health Department dictates the septic systems not the Planning Commission.

Upon a motion by Mr. Magill, seconded by Mr. Rogers, and duly carried, the Commission **APPROVED** the Preliminary Plat for the Knolls at Barren Creek, Section 2, subject to the following Conditions of Approval:

**CONDITIONS:**

1. The Final Plat shall comply with all requirements of the County Subdivision Regulations.
2. Health Department approval is required prior to the recordation of the Final Plat.

3. The Final Plat shall comply with all applicable requirements of the Forest Conservation Program.
4. The Final Plat shall comply with all requirements of the Chesapeake Bay Critical Areas Program. Certificates of Compliance shall be obtained for development of each lot, if applicable.
5. The 100 year floodplain line shall be shown along the contour line of Elev. 5.0 per the new Dfirm (Floodplain) maps. This elevation change reflects an adjustment from 1929 datum to 1988 Datum. Elevations along the contours must be shown.
6. A MDE water appropriation permit exemption will be required.
7. Developer shall provide widening and improvements to Mill Branch Road as deemed necessary by the Department of Public Works.
8. Adequate drainage and maintenance easements shall be required along Mill Branch Creek.
9. This approval is subject to further review and approval and conditions imposed by the County Department of Public Works.



### **Commission Discussion – Draft County Comprehensive Plan.**

Mr. Keith Hall and Mr. Jack Lenox came before the Commissioners to present their monthly briefing about the Draft County Comprehensive Plan. Mr. Lenox discussed the proposed State legislation that may have potential impacts to the Comprehensive Plan. There is still a discussion as to what PlanMaryland means. There was a meeting held earlier in the week with Secretary Hall of the Maryland Department of Planning. The local government has Planning and Zoning authority. The role of MDE and the Health Department are tied up with the new legislation. In 2011, the General Assembly reviewed HB 1107 (Septics Bill) that proposed limiting the use of septic systems to no more than five (5) lots per subdivision. There was some rebuttal about applicability of that. Now there is a review of the Municipal Water and Sewer plans and how this new bill will relate. The match up has gone well in Wicomico County, with the exception being the Town of Hebron. The most recent version of Senate Bill 236 would have us defining a four (4) tier system. The City, as well as the incorporated areas that are Priority Funding Areas would represent Tier I areas. The proposed requirements for a major subdivision in the Tier II areas would require the subject property having existing or planned water and sewer service within 10 years and within a designated Priority Funded Area or are mapped locally designated growth areas. As proposed in Senate Bill 236, Tier III areas may be eligible for major subdivisions based on a proposed set of criteria

and a one-time approval of the delineation by the Maryland Department of Planning. Designation criteria for Tier III areas would include: areas that are not planned for sewerage service and the areas zoned for large-lot and rural development that are not zoned for agricultural or resource protection or areas not dominated by farmland or forest land. For Wicomico County, Tier IV areas would directly relate to A-1 zoned areas, as well as the draft delineation of the Priority Preservation Area. As the bill has been presented to the General Assembly, it would significantly restrict the number of septic systems in rural areas. Different counties have different thresholds for minor subdivisions. There are subdivision plans that the Commission has never seen, such as minor subdivisions or lot line corrections. As of right now, the State is letting the local government decide what a major subdivision is based on the definition in effect as of January 2012. Wicomico County doesn't have a definition of major subdivision. The definition of a minor subdivision in Wicomico County is three (3) inherent lots going back to the parent lot as of 1968. The bill is being interpreted that the land owner could get three (3) more septic systems if the law goes through July 1 as proposed.

Mr. Hall explained the proposed legislation contains the provision that if the Comprehensive Plan is not amended by December 31, 2012 with the Tier maps then MDE can't approve any major subdivisions in Tier III and Tier IV areas. If the legislation is enacted, the timing of the Comp Plan updates will be very important how we need to proceed.

Mr. Lenox stated that there was some discussion that this may be taken out of the Comprehensive Plan, but that is only a possibility.

Each member was given a copy of the Senate Bill in their meeting packet. Staff will evaluate the need of preparing a map to identify the potential Tiers in Wicomico County for a future Planning Commission meeting.

Mr. Hall briefly discussed the grandfathering provision of this proposed legislation (SB 236). The grandfathering provisions would apply to a subdivision application made on or before July 1, 2012 and the subdivision plat is recorded on or before December 31, 2013, or if the application is made on or after July 1, 2012 and the subdivision is recorded on or before December 31, 2012. It is a very condensed time frame.

Mr. Hall explained that the Tier map would be subject to a one time review by the Maryland Department of the Environment (MDE) and the Maryland Department of Planning (MDP) as part of the first major subdivision proposed in the County after December 31, 2012. MDE and MDP will determine if it meets the eligibility criteria. If they do not, then we would go back to the drawing board and work with MDP and try to reconcile the differences.

Mr. Lenox stated that there is a lot going on in Annapolis right now, some of which involves eligibility for grant funding. The questions are only going to get more difficult to address, as in what they are telling us to do and becoming eligible and / or remaining eligible for funding. The City has seen this and Mr. Spies will see this at City Council, something that is called Sustainable Communities Program where they have taken a number of grant programs that the City would apply for, in our case Community Legacy being the main one, and make us go through a certification process to try to meet all of the dates. There is an expectation that there is more Staff availability. Salisbury will meet the deadline of April 1 assuming there is Council consent.

Mr. Hall stated that PlanMaryland was the first in time for a State Development Plan. It came out of the Planning Act of 1974 which the General Assembly authorized MDP to prepare a state-wide development plan to look at many issues such as land use, transportation, economics, environment, natural resources and so forth. April 2011, the first draft was revised and received significant opposition. Like the septic bill, it came under a lot of scrutiny. The County has commented on the first draft and has received the second draft. The exact intent of PlanMaryland is unknown, but the Governor has approved it. A major component for the County is the designation of Places, as defined by PlanMaryland Guidelines. Designated places encompass the following five (5) categories:

- ❖ Locally designated places will be targeted for revitalization or targeted for growth
- ❖ Future growth areas
- ❖ Establish communities
- ❖ Rural preservation
- ❖ Large lot development areas with 5-20 acre lot sizes

The State has prepared the design guidelines for the Counties and the local jurisdictions to delineate these five (5) designated areas. That information should be available some time in the spring, which once it's available the State will commence the 120-day comment period on the designated places guidelines. Maryland Department of Planning will review comments, but are not required by law to make any revisions to the guidelines. He added that PlanMaryland emphasizes that its intent is not meant to replace local Planning and Zoning authority, but was designed to identify areas for State monies to be invested for infrastructure projects. The areas in Wicomico County need to be designated based on our expertise, instead of the State defining these areas. The goal is to have the first phase of designating places completed by December 2012 of.

Mrs. Bartkovich questioned if Maryland Department of Planning would put the places criteria on their web page. Mr. Hall responded that he could put that request into the MDP office. Mrs. Bartkovich requested that Mrs. Tull notify the Commission members when that information was available on the web.

Mr. Magill questioned if there were any more definition concerns. Mr. Lenox responded that there would need to be some clarification on definitions.

Mr. Dashiell questioned if the narrative that had been discussed was on hold until the General Assembly is done. Mr. Hall responded that it would be up to the Commission; however, consideration should be given to focus on other areas of the Plan because of the potential impact to the Land Use Element and the PPA Element if the proposed legislation is enacted.

Mr. Lenox added that all the State deadlines have been met.



There being no further business, the Commission meeting was adjourned at 2:59 p.m. by Mr. Dashiell.



This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning, and Community Development Office.

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Charles "Chip" Dashiell, Chairman

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John F. Lenox, Director

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Beverly R. Tull, Recording Secretary

