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## MINUTES

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The Salisbury-Wicomico Planning and Zoning Commission met in regular session on April 21, 2011 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  
Glen Robinson (Absent)  
Scott Rogers (Absent)  
Gary Comegys (Absent)  
Jacob Day

**CITY/COUNTY OFFICIALS:**

Ed Baker, County Attorney

**PLANNING STAFF:**

Jack Lenox, Director  
Gloria Smith, Planner  
Keith Hall, Planner  
Frank McKenzie, GIS  
Beverly Tull, Recording Secretary



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



Mr. Dashiell acknowledged Mr. Tim Spies who was observing the meeting. He congratulated Mr. Spies on his election and his upcoming appointment by the City Council to the Commission.

Mr. Dashiell thanked Mr. Gary Comegys for his service as a faithful member of the Planning Commission.

Mr. Dashiell introduced Mr. Jerrold Marshall, Mardela Springs Town Commissioner, and thanked him for attending the meeting.

Mr. Dashiell acknowledged Mr. Jan Wiseman and Mr. John McClellan from the Greater Salisbury Committee and thanked them for attending the meeting for the Comprehensive Plan discussion.



#### Minutes:

Upon a motion by Mrs. Bartkovich, seconded by Mr. Day, and duly carried, the Commission **APPROVED** the minutes of the February 17, 2011 as submitted. The March 17, 2011 minutes were not acted on due to lack of a quorum.



**MARDELA SPRINGS – TRANSFER STATION ANNEXATION – Zoning Recommendation  
– 11.98 Acres; M-17; P-72; G-5.**

Mr. Jerrold Marshall came forward. Mrs. Gloria Smith presented the Staff Report. Mr. Robert Benson, Attorney for the Town of Mardela Springs, has submitted the Mardela Springs Transfer Station annexation on the west side of Mardela Springs for review by the Planning Commission. The property is located off the northerly side of Athol Road, and consists of approximately 11.98 acres of land area across Barren Creek from the existing corporate limits of the Town.

Mr. Marshall explained that the Town had recently been surveyed, and that it was determined that since the Town owned the Transfer Station property then it should be part of the Town limits.

Mr. Magill questioned how Mr. Marshall could address the connectivity to the town limits. Mr. Marshall responded that the property would be connected through the creek. Mrs. Bartkovich questioned if the Town of Mardela Springs only owned to the middle of Barren Creek. Mr. Marshall responded that Mr. Benson had done research in Annapolis that indicated that this would be a permissible annexation. Mr. Day stated that the claim was that the adjacency was achieved by the extension of the property line to the water. Mr. Baker explained that this type of precedence had been set by an annexation to Denton in Caroline County.

Mrs. Bartkovich questioned who owned the right-of-way. Mr. Marshall responded that the adjoining property owner owns the right-of-way. Mrs. Bartkovich stated that there can't be a landlocked piece of property. Mr. Marshall stated that the right-of-way was negotiated by the County and that he believed that it will run in perpetuity with the land. Mr. Dashiell questioned Mr. Baker if this should be verified. Mr. Baker responded in the affirmative.

Mr. Marshall stated that the Highway Commercial zoning is the only zoning that the Town has available for this parcel, as the rest of their categories involve Residential zoning.

Mrs. Bartkovich questioned why the Town wasn't considering a zoning that included both residential and commercial zoning. Mr. Marshall responded that the Town didn't want to disturb any ag zoning for the farmers who are utilizing the adjoining farmlands.

Mrs. Bartkovich questioned why the County Council would have to approve the zoning. Mr. Lenox responded that the issue isn't the Town annexing the property but the zoning of the property. Mr. Lenox questioned if Mr. Benson had given any reason as to why this property couldn't be zoned residential. Mr. Marshall responded in the negative. Mr. Lenox explained that if this parcel was to be zoned residential then it would be consistent with County zoning and wouldn't require Council consent. The parcel will be exempt from zoning because it is a County use. Mr. Lenox added that if the zoning was changed to residential that it would make it a lot cleaner.

Mr. Day questioned if a special exception would be required for this use. Mr. Lenox responded in the negative, adding that this is a public use. He went on to explain that the Commission is missing the Town's Attorney who has the knowledge of the Town's Codes. Mr. Lenox stated that he could see the Commission recommending a residential category of zoning; or the Town could proceed with the Highway Commercial zoning and go before the County Council for their consent; or the matter could be tabled until Mr. Benson is available to be here for a meeting.

Mrs. Bartkovich stated that she wasn't comfortable with the zoning being requested. Mr. Magill voiced his agreement and suggested tabling the request. Mr. Lenox stated that the Commission could proceed with a residential zoning category and the Town could return to discuss a different classification if needed.

Mr. Day questioned Mr. Lenox if he was confident that the concern from MDP would be handled if the zoning was one of the residential zonings. Mr. Lenox responded that yes it would be consistent with the residential zoning if that option was taken.

Mr. Baker stated that he didn't find anything definitive but Mr. Mark Whitelock stated that the easement has been in place for 25 to 30 years and that it appears that the easement would continue.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission forwarded a **FAVORABLE** recommendation for *Residential* zoning for the Mardela Springs Transfer Station Annexation upon annexation to the Town of Mardela Springs. Residential zoning is consistent with the current County zoning designation of Town Transition, as well as the Mardela

Springs Comprehensive Plan designation as a town growth area and will not require Wicomico County Council approval. If the Town wishes to pursue the Highway Commercial zoning, the request will need to be rescheduled for further discussion by the Planning Commission.



Mr. Dashiell recognized Mr. Bob Caldwell, County Councilman, who was attending the meeting.



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

Mr. Lenox, Mr. Baker, and Mr. Hall came forward. Mr. Lenox stated that Mr. Baker was joining the discussion to address the relationship between the Comprehensive Plan and the implementation rules. There has been discussion in the Courts in the last few years as to the role of the Comprehensive Plan.

Mr. Baker stated that he had hoped that Ms. Lanigan would be able to make the presentation because she was responsible for the Whiton case. The case was decided for the County. The case determined that the Commission has a great deal of flexibility when it comes to clusters. The purpose clause can be used for determination. He further discussed that "consistency" is now specifically defined in State Law. The 1992 definition of consistency has been modernized and in 2009 it got a new definition. The Comprehensive Plan is not a mandatory straight jacket. Mr. Baker added that following the adoption of the Comprehensive Plan, Mr. Lenox's office will need to prepare regulations for adoption that support the contents of the Comprehensive Plan. The County Attorney's Office will be providing further guidance.

Mr. Lenox stated that following the workshops, there were many written and oral comments received. If there is something in the Comp Plan it does carry weight but it is not regulatory. Mr. Lenox added that it is

difficult to write a 20 year plan without having any contradictions, and the individual sections should be considered in the larger context.

Mr. Dashiell questioned that the more specificity in the Plan, the less discretion the Commission will have in regards to enforcement of what could be considered regulatory. Mr. Baker responded that the Commission will adopt a Plan and then implement regulations to support that plan. Mr. Dashiell stated that the flexibility of the Commission will diminish with the more specificity that exists in the Plan. Mr. Baker responded in the affirmative.

Mr. Magill questioned how the Commission acts on future subdivisions that are outside the Metro Core in regards to the flexibility issue. Mr. Baker responded that the Commission will continue to act as they do now using the flexibility that they have within the Code.

Mr. Day questioned if the memo that Mr. Baker had referred to was in regards to the Whiton issue or the consistency issue. Mr. Baker responded that there was no memo and that Ms. Lanigan had written the court brief to the Court of Special Appeals regarding the Whiton case. Mr. Baker stated that as we move forward, that a white paper will be provided to the Commission. This will all be dealt with on a case by case basis. Mr. Lenox added that the Findings of Fact are being done on every cluster subdivision.

Mr. Lenox explained that the Draft Plan has been out there and that all the comments that the Planning Office has received have been copied to the Commission. The comments received were never intended to be gone through line by line. The offer still remains for one-on-one meetings if anyone wants to come in to discuss the Comprehensive Plan. He went on to explain that the Comp Plan is a very long document. The Commission can opt to go through it a section at a time. There are topics that will appear in multiple chapters of the Plan or in only one (1) place. The Towns that chose to participate have had their information included in the Plan. The Plan will direct development to the center of the County. The City Comprehensive Plan has been adopted. Mr. Hall will discuss the working land use map. The development capacity analysis has been included based on certain assumptions, including the broad numbers that are currently available from the Census Bureau. In May the Census Bureau should be releasing the more in depth numbers. Other areas for discussion include:

- Densities
- Land Use Plan for densities
- Ag Recertification – Priority Preservation Areas are needed to keep the funding local. Development restrictions are needed to get State approval.

- Possibility of two-tiered ag district
- Continued work on TMDL's

Mrs. Bartkovich questioned if when discussing PPA and development restrictions that they would have to also then look at the Zoning Code. Mr. Lenox responded that Staff wouldn't work on the Zoning Code while the Comprehensive Plan was being worked on but the Zoning Code would have to be updated to adhere to the Comprehensive Plan after it is adopted.

Mr. Day questioned if there was a way to estimate how quickly a Priority Preservation Plan recertification might happen. Mr. Lenox responded that the PPA is Ag. Mr. Hall added that the Ag has most of the characteristics already other than the goals. He further stated that it would take a few weeks at most to get it ready but would take some time to discuss PPA implementation.

Mr. Day questioned if it was still the Staff's stance that the MGE doesn't include all the growth areas. Mr. Lenox responded that the population projected for the next 20 years can be accommodated in the Municipal Growth Areas. Mr. Hall added that using the 2004 zoning as a baseline, the Cities and Towns have defined their growth areas through 2030.

Mr. Day stated that the greenbelts are directly contradictory to the growth areas. He also questioned if the development capacity analysis was included strictly for informational purposes.

Mr. Day questioned if Staff was expecting further guidelines on TMDL's and what their impact would be on the County. Mr. Hall responded that they were working on the Phase II WIP and what it really is. The second model numbers are due in mid-July. At this point, it is hard to determine what the impacts will be on the County, but it appears that there will be some type of impact.

Mr. Magill questioned if there is a Long Range Transportation Plan since there was a letter from Mr. Smethurst about the extension of Goddard Parkway at the Commission's seat. Mr. Hall responded that the Transportation Plan is currently being updated. The situation that Mr. Smethurst discussed regarding Goddard Parkway is being included; however, there are some points that may cross. Mr. Day questioned if there was an answer to the question about why the road extension didn't happen. Mr. Hall responded in the negative.

Mr. Hall displayed the updated Land Use Plan map and discussed the changes. The Ag Resource areas now have had the forested

land extracted. The majority of the rural subdivisions (4 lots or more) have been extracted. The tidal wetlands have also been extracted. There have been some requests for rezonings on parcels such as a parcel on Hobbs Road and a parcel in Willards.

Mr. Lenox commented that there have been comments received that a wall has been built around the City. The Comprehensive Plan can be made longer by extracting information from the municipal plans and adding it to the County Plan, if that is the direction that the Commission would like to go.

Mr. Day suggested extracting issues like the Library and including that information in the Comprehensive Plan. Mr. Lenox stated that things could be restated in the County Plan from the municipal plans so that the differences can be brought back to the Commission. Mr. Day suggested findings similar issues such as the Library to repeat in the County Comprehensive Plan that may be useful to the County Council at some point. Mr. Lenox agreed to try and make sure that nothing important has been left out of the Comp Plan.

Mr. Lenox stated that the Commission needed to give Staff direction on what to do in the Ag District. Mr. Dashiell suggested starting with the densities. He requested that on the agenda, topics for discussion be listed. Mr. Lenox responded that it is the Staff's intention to have something on the Comp Plan on every agenda.

Mr. Day questioned if the Commission should go through the Plan chapter by chapter or issue by issue. Mr. Dashiell responded that he would prefer not to spend time on issues that the Commission is fine with and go specifically by topic.

Mr. Dashiell questioned if there was any sense that some topics could be handled in the next few months. Mr. Lenox responded that the Ag District shows up in every chapter of the Comp Plan.

Mr. Day noted that some of the topics in the comments would be addressed in the Ag portion of the Comp Plan.



There being no further business, the Commission meeting was adjourned at 3:13 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