



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, August 25, 2021, at 6:00 p.m.

I. Welcome and Roll Call – Task Force Member and Chair Kim Kohl

Chair Kim Kohl opened the meeting at 6:15 pm, conducting member roll call.

The following Task Force members were in attendance: Chair Kim Kohl, Vice Chair Joe Hickman, Albert Nickerson, Bill Norris, Bill Sutton, Bryan Greenwood, Buck Nickerson, Jim Saunders, Pat Langenfelder, Paul Ruge, Tyler Brown, and Tom Mason.

The following staff attended: Planning Commission Attorney Cynthia McCann, Esq; DPHZ Director William Mackey, AICP; Deputy Director, Carla Gerber, AICP; Associate Planner, Mark Carper; and Clerk, Michael Pelletier.

Members of the public who attended in-person or remotely included: David Hill; Janet Christensen-Lewis; Paula Reeder; Judy Gifford (remote); Jennifer Debnam; John Myers, Jr.; Frank Lewis; Gary Miller; Adam Blitzer; Sara Ramotnik; Michael Woodward; and Elizabeth Watson. The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Purpose - Fair and Open Discussion on Proposed Text Amendments

Outcome - Staff is to summarize Task Force positions in Meeting Summary

Ground Rules

- A. Everyone is encouraged to share ideas openly and freely.
- B. There are no right or wrong inputs for discussion purposes.

Norms

- Participants speak 'through the chair'. This means raising your hand if you want to speak, and waiting for the chair to call on you.
- Don't interrupt other people.
- Don't talk/debate amongst yourselves.
- Respect other's views.
- Keep contributions short and to the point.
- Start and end on time.
- If online or on the phone: have your video ON and mute ON. Wait for the Chair to call your name before you unmute

III. New Business

A. Review of TF2: (elimination of the County's 10 percent rule)

Ms. Gerber provided background information regarding the application of the 10 percent rule provisions and its implementation going back to the 1996 Comprehensive Plan explaining how a property may only be subdivided into lots that do not exceed 10 percent of the area of a farm. This rule was implemented as a means of encouraging agriculture and agriculturally based businesses and to limit housing development.

Ms. Gerber relayed that she reviewed over 200 subdivisions from 1989 onward and concluded that more subdivisions included multiple lots prior to August 2003. Additional examples of the rule's application and a statistical analysis for over 3,000 parcels were also relayed to the Task Force.

Staff recommended that the 10 percent rule be retained with regulations to allow for waivers. Staff's recommendation pertaining to waiver regulations would include allowing lines of division to follow natural boundaries or roadways, certain estate settlements, and special agricultural operations where it could be demonstrated that the business does not require 100 acres to be successful.

Staff further recommends that an expansion of the Rural Character district could be considered during remapping if there is a need for large lot subdivisions.

Mr. Mackey relayed that a task force member was unable to attend but had made the following written comment:

I have had conversations with ag land owners who personally support eliminating the 10% rule and would like to see smaller ag parcels permissible for new and emerging agricultural uses or for their family uses ... I believe we need to allow subdivision of ag land into smaller (20 and larger acres) parcels for young agricultural entrepreneurs to start and grow emerging ag businesses. Subdivision should be allowed as long as the owner keeps the land in ag use. This is consistent with our comp plan and Economic Development plans to encourage emerging ag businesses uses in Kent County. Many of these businesses do not need more than 20 acres.

Another member agreed with Staff's recommendation to retain the 10 percent rule with special exceptions on specific cases. The member was opposed with removing the 10 percent rule and allowing farms to be subdivided throughout the County.

A second member agreed with the first member's opinion. This member also inquired whether, in lieu of changing the AZD rule, the task force should look at the Rural Character and Village Districts as a buffer between large scale operations. The member sought clarification from Staff regarding the consultant's determination. Staff noted that the consultant had stated that 10 percent is low in comparison to other policies he is aware of.

A third member raised an inquiry concerning the enclave rule as it relates to density and fragmentation. Staff confirmed they had not had any inquiries pertaining to the enclave rule.

A fourth member voiced opposition to the 10 percent rule and that the task force needs to consider the needs of all landowners as opposed to a few select landowners. A proper balance should be sought for

future needs. Forty percent of the land in Kent County is already under preservation and another third of the properties are also under virtual preservation, as the land will not pass a perc test. Eliminating the enclave system in the Ag district is a better approach. Zoning should be based on opportunity, not property values. The member noted that the majority of Counties do not have a 10 percent rule and based on the member's conversation with several landowners, the general consensus is to delete the 10 percent rule.

The Chair confirmed with Staff that approximately five or six letters on this topic have been received.

Note: A number of letters were also received on the day of the meeting. A total of 11 letters were received. The letters were opposed to the elimination of rules, supported current ag-related regulations in general, and supported 600-foot setbacks for waste management facilities. In some cases, letters included objections to data centers and solar arrays on farmland related to prior items on the August 11th agenda.

The fourth member took exception to some of the letters written in opposition to the 10 percent rule, because they were so similar in format. Another member explained that some property owners had asked for help with letters and approached the member to assist with the letters.

Public Comment

Paula Reeder, resident of Still Pond, spoke in opposition to the 10 percent rule. She felt that there are currently several ways to get past the 10 percent rule, and it's currently not being applied uniformly. She also noted that several small farms are struggling, and they do not require all of the acreage to operate a small farm.

Jennifer Debnam, Kent County Farm Bureau, read a previously issued letter to the Task Force. The Bureau supported ag preservation and, because of the attendance restrictions due to COVID, requested that the timeline be extended for more public participation and transparency.

Judy Gifford (remote) relayed that the concern that small farmers are going to start farm 30 acres is unrealistic and really should not be seen as a concern at all. She also felt that Kent County is the model County for the State, and Kent County should not look to Queen Anne or Cecil County for guidance.

John Myers, Jr., native of Kent County, supports the 10 percent rule and would even lower it more. Mr. Myers wanted to state for the record that he played an important role in instituting preservation efforts in Kent County and to address that monetary motives were not why preservation was sought years ago. It does not make sense for these tracts to be subdivided. The only people are capable of farming smaller tracts would probably be Amish farmers and that the true purpose for these subdivisions would be for future development. He stressed the importance of retaining the Rule and if the County keeps carving out more and more subdivisions, Kent County will lose its rural character and be transformed into a jurisdiction similar to Queen Anne's County or Kent Island. He was also concerned that with the loss of farms, the citizens of the County will have to commute because there would not be many jobs available to them.

Janet Christensen-Lewis, KCPA, supports the Staff's recommendation and discussed the failed farming that is occurring in Middletown, Delaware; Howard County; and Montgomery County. She noted a small farm program that has been successful in Montgomery County in which young farmers, lease the land,

and recommends that the County consider implementing a similar program. Ms. Christensen-Lewis also spoke in favor of changing the enclave rule.

David Hill, Chairman of Kent County Agricultural Preservation Advisory Board, is in favor of the Staff's recommendations. He felt that breaking up farms even smaller would not be successful. Leaving the 10 percent rule in place would better the community, and exceptions can be granted on a case-by-case basis.

Frank Lewis, farmer in Kent County, spoke in favor of retaining the 10 percent rule because it is one of the key elements in the Comprehensive Plan which serves to preserve agriculture in Kent County. He noted that Kent County has the highest percentage of agricultural area of any County in Maryland, and that is because of the zoning protections that have been put in place since the 1970's.

Gary Miller was against the 10 percent rule.

Note: On September 22, 2021, during review of the minutes, a Task Force member expressed the opinion that the meaning of Mr. Miller's statement was that he was opposed to the elimination of the 10% rule.

Adam Blitzer voiced his support of the 10 percent rule.

Sara Ramotnik, Eastern Shore Land Conservancy, voiced her organization's support of the 10 percent rule.

Michael Woodward was in favor of the Staff's recommendation.

The fourth member inquired about Staff Report data on undeveloped and unbuildable lots. The member opined that there are not that many buildable lots available. Ms. Gerber clarified the report is not representing that the data pertained exclusively to buildable lots, but rather, pertained to unimproved parcels, and she agreed that not all of the parcels set forth in the report would be buildable or tillable. The report does, in part, demonstrate that there are a number of buildable lots that have passed a per cent test and would allow people to build additional new homes in existing subdivisions or on existing lots.

Elizabeth Watson voiced her support for keeping the 10 percent rule.

A fifth member was in favor of eliminating the 10 percent rule. He cited two different cases he was aware of in which the rule has hurt local farmers. He also discussed the preservation efforts already in effect and felt landowners should have more say in how they use their properties. He believed the 10 percent rule was harmful to agriculture in Kent County.

The Task Force did not come to a consensus. Some members supported retaining the 10% rule with the purpose of preserving agriculture in its current context. Some members supported elimination of the rule with the purpose of allowing more diverse farming outcomes. Some members expressed supporting the staff recommendation to create an exception process.

The meeting closed for a break at 7:15 p.m. and resumed at 7:23 p.m.

- B Review of TF 5: Review concept of a reset in AZD to allow building sites up to 1 unit per 30 acres as the approval of new zoning regarding of what has been subdivided previously.

Ms. Gerber noted that this request would reset the date for determining density in the Agricultural Zoning District effective the date of approval of the new Zoning Ordinance.

Ms. Gerber added that the 1 unit per 30 acres was adopted in the 1989 Zoning Ordinance. At the last Zoning Ordinance update, it was decided that the date for density determination would remain August 1, 1989. Since this date, 300 new lots have been created in the Agricultural Zoning District. Additional subdivision statistics were also provided to the Task Force.

Ms. Gerber stated that Staff recommends the date of determining density remain August 1, 1989, but suggests a consideration of a waiver to be granted by the Planning Commission to allow additional density and /or subdivisions up to 7 lots which may be reviewed on a case-by-case basis.

Ms. Gerber noted Staff is concerned that resetting the date of density could jeopardize exemptions to Tier IV septic restrictions on major subdivisions granted to Kent County by the State of Maryland. These exemptions are important because landowners effectively have more flexibility in regard to density requirements. Only three Counties in Maryland enjoy this exemption and the benefits that it conveys. Overall, the total density must be retained at 1 unit per 20 acres or less for an exemption to be granted. Following the adoption of the new Land Use Ordinance, the State would review the County's status again.

A member spoke in opposition to resetting the date of density on farms and allowing more houses to be built in the Agricultural Zoning District. The member informed the task force that the Comprehensive Plan states that agriculture is a permanent and preferred land use and there should not be any conflicting land use provisions in the Ordinance. As with the 10 percent rule discussion, resetting the date of density is one step in a potential process that would encourage development in the Agricultural Zoning District. The member turned to discuss the member's observation on the decline of agriculture in Howard County due to development and raised concern of that same potential developing in Kent County.

A second member spoke in opposition to resetting the date of density and that it creates a lot of confusion on whether this would only apply to Ag or the other zones as well.

A third member spoke in opposition to resetting the date of density and felt it would be unfair to property owners who are in queue for MALPF preservation by allowing other owners a benefit of a density reset.

A fourth member noted he agreed with the second member that this provision could draw confusion on how or if it was applicable to other zoning.

Public Comment

Janet Christensen-Lewis, KCPA, was in opposition to the density reset. She stated that more housing development would eventually lead to new water and sewer costs for the County. This provision appears to be a piece of long-term planning that would lead to development.

The Task Force expressed support for the retention of the current date for density with the purpose of supporting the agricultural context and preventing widespread subdivision.

C. Review of P17: Request to add Agritourism, as defined by the State of Maryland, as a permitted use in AZD

Mr. Carper informed the Task Force that the current Land Use Ordinance does not specifically address agritourism as a defined use.

Mr. Carper conveyed that on May 15, 2018, Governor Hogan signed House Bill 252, which established a model definition of agritourism. The State's definition includes a set of 10 activities that meet the adopted definition.

Mr. Carper compared the State's agritourism definition with the National Agricultural Law Center which contains similar language.

Mr. Carper discussed various County statistics pertaining to farm size, number of agritourism operations, scope of services, and enterprise focus. In sum, Mr. Carper noted that Counties with lower percentages of farms have a greater share of small farms and higher than average agritourism earnings. In addition, emphasizing commerce in a definition does not correlate with larger average agritourism earnings per operation, and Counties which emphasize tourism promotion have the best average agritourism earnings per operation.

Mr. Carper stated that Staff recommended adopting the State's model definition of agritourism with some modifications to reflect the conditions and goals of Kent County. This model provided several express examples of agritourism activities and specifically required that such activity be secondary to agricultural use of the land.

A member had a question about parameters or restrictions on agritourism. The member noted potential traffic concerns as an example. Ms. Gerber clarified that there would be no restrictions, but those concerns could be addressed in a site plan review.

Public Comment

John Myers, Jr. had a question for Staff as to whether agritourism applied to all farmland or would there be any restrictions on which properties could participate based on their preservation status. Ms. Gerber responded MALPF has a uses policy that could allow for certain agritourism opportunities.

Mr. Myers stated he felt that agritourism is very important in Kent County and noted that he believed there needs to be more interaction between the agricultural community and the public.

Ms. Gerber added that Ag tourism activities are currently allowed in the County. The purpose of providing this definition is to clarify what the Department means by Ag tourism and allow landowners to have a certain amount of certainty that something is permitted without having to come to the Department to ask each time if an Ag tourism activity is allowed. The Department currently issues temporary use permits for some activities such as corn mazes or carnivals, and other uses, such as tasting rooms and wineries, are allowed within the permitted use of "structures for the buying, processing and sale of farm products related to agriculture."

Mr. Myers stressed the importance of including hunting in the definition because it is an important part of the County's community.

The Task Force did not express opposition to the proposed definition in the staff report for agritourism.

The Chair informed Staff that the Task Force will save Part B of this topic for the next Task Force Meeting.

Mr. Mackey stated that at the next meeting some of the results of the 2020 Census will be presented as an informational item.

IV. Task Force Comments - There were no additional comments.

V. Adjournment

Chair Kim Kohl adjourned the meeting at 8:00 p.m.