



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, August 11, 2021, at 6:00 p.m.

I. Welcome and Roll Call – Task Force Member and Acting Chair, Joe Hickman

Vice Chair Joe Hickman opened the meeting at 6:00 pm, conducting member roll call.

The following Task Force members were in attendance: Vice Chair Joe Hickman, Albert Nickerson, Bill Norris, Bill Sutton, Bryan Greenwood, Buck Nickerson, Chikki Shajwani, Cindy Genther, Pat Langenfelder, Sam Shoge, and Tom Mason.

The following project 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.

County staff who attended included: Jamie L. Williams, Director of Economic and Tourism Development.

Members of the public who attended in-person or remotely included: David Hill; Janet Christensen-Lewis; Paula Reeder; Jennifer Debnam; Judy Gifford; Elizabeth Watson; Allen Davis; and Jim Moseman. The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Approval of Summary for the Task Force Meeting on July 28, 2021

The Chair requested a Motion to Approve the Meeting Minutes Summary from July 28, 2021. Two members had concerns with regard to the meeting summaries of the proceedings as it related to two sections of the minutes. Task Force Members and Staff also discussed the role and function of the task force and the overall goal of these proceedings.

Ms. McCann inquired as to what clarifications would be made. Ms. Gerber identified a change to page 6 replacing the word "town" with the word "channel." The second correction would be on page 7 inserting the words "more members spoke in support of flexibility." The Motion to approve the meeting minutes was approved conditional upon these clarifications being added to the minutes.

III. 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.

Adopted on September 8, 2021

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

IV. Old Business

A. Review of TF9: (elimination of the County’s maximum pier length of 150 feet)

A member wished to add clarification to potentially inaccurate testimony proffered on July 28, 2021.

The first issue of concern was related to the River Keeper’s testimony that “dredging” was utilized in the construction of piers. In response, the member cited that a State and Federal license prohibits such practices. As such, the member felt that the term “dredging” was not an accurate term that would apply to how piers are constructed. The member read an excerpt from the license that it “proposes no dredging and this license provides no justification or assurance for future dredging. All dredging projects will be evaluated on the biological and physical characteristics of the site at the time an application is made.” The member stated that a federal license basically has the same language, “This activity does not authorize filling or dredging, doesn’t authorize prop propeller dredging, prop dredging and any future request, dredging navigational access would need to be similarly authorized.”

The member informed the Task Force that every waterfront property carries with it riparian rights. The member also explained how riparian rights are applied in relation to a property line, channel location, set back requirements, and critical area restrictions to create an equitable line.

The member also had an additional concern in response to a member of the public’s comment that piers could be constructed by surprise, as it relates to neighbors without an appropriate mechanism in place by the County to notify the public. The member added there were certified mailing requirements to the neighbors as well as notification requirements to State and County Officials that proper notice was issued. Any notification by surprise would be by an illegally constructed pier.

V. New Business

A. Review of P1: Request to change farm definition so a shed could be built without a dwelling

Mr. Mackey informed the Task Force that the land use ordinance currently does not contain any provisions that would allow the construction of a shed on a property without a dwelling. This request was made by a member of the public with less than 20 acres.

In order to accommodate this request, the definition of a farm or accessory structure must be altered, or potentially both.

Staff recommends that the Task Force consider adding a new special exception, whereby non-farms with unique circumstances such as perimeter conditions, topography, or access issues may apply for accessory farm buildings in the Agricultural Zoning District.

A member noted that if a property is being used for agricultural use, five acres, for example, would allow an owner to get an agricultural tax assessment. As this is one standard already set, it might be easier if one standard would mesh with another.

A second member noted that the 5-acre assessment pertains to State law and felt that a special exception is a better approach, because if the County lowers farms down to 5 acres, that would change uses and activities.

The first member added that some benefits to reducing the acreage might include allowing owners to have a greenhouse, roadside stand, as well as flower and produce sales. It might be difficult for owners to obtain more acreage due to capital costs, and many people might want to have a small space and make it work for them.

A third member added that the issue in this case is whether the owner can build a shed on this parcel without having a house first. because it does not meet the definition of a farm since its under 20 acres. The member agrees with the staff recommendation to add a special exception, because it's not currently allowed, and the member voiced concerns of the challenges and negative implications associated with setting out many of the exceptions by a matter of right. If an applicant meets all the parameters of a special exception, has a hearing and neighbors are notified, the applicant could be granted that special exception. The member indicated the member is not in support of changing the definition of a farm, because to do so would allow for certain uses not intended for certain neighborhoods.

A fourth member also was not in support of changing the definition of a farm but was in support of a special exception if the Board of Appeals would directly approve it, as opposed to going before the Planning Commission first. The member suggested they might want to consider adding a new definition such as "farm building" which might address some unanticipated uses on these parcels.

The second member raised support for the process involved. The third member discussed experiences with the length of time it takes to go through the process of certain land use proceedings and would like to see if these processes could be condensed.

The first member wanted to clarify for the record that the member was not proposing to change the acreage limit to 5 acres, which may have been inferred earlier in this discussion.

Public Comment

Janet Christensen-Lewis of KCPA, asked whether this request was to build a shed and not a greenhouse. Mr. Mackey confirmed this particular request pertains to a shed.

Paula Reeder had concerns over the scope of the proposed definition as it relates to the types of accessory structures and urged that additional review of the proposed language should be considered. Ms. Gerber clarified that the list of uses Ms. Reeder read into the record pertain to accessory structures as they relate to farms.

A fourth task force member added the member agreed with the second- and third-members' positions. The member agrees that the County does need to look at different ways it can streamline some of its proceedings.

A task force member was unable to remotely access the meeting but had the following comments regarding this agenda item:

Regarding the Ag discussion, I had hoped to voice support to allow for ag land to be subdivided into smaller 10–20-acre parcels, as long as it stayed in ag use. We see many potential buyers who would like to own smaller (less than 50 acres) parcels of land to grow specialty crops or raise animals on a smaller scale. Many of these are younger people looking to enter the specialty ag business. I believe our comp plan supports this use and diversification of our agribusiness base. Not all farmers can afford 100+ acres and this would be a way to encourage more people to enter the agriculture field in Kent County.

The Task Force expressed a consensus that the definition of a farm should not be reduced to five acres. Some members spoke in favor of a special exception to allow non-farms under 20 acres in AZD to apply for accessory sheds, and one member preferred that providing this could be by the shorter path towards a special exception review, which does not include Planning Commission review.

B. Review of P2: Request to allow utility-scale energy systems in the Agricultural Zoning District

Mr. Mackey noted this public request had received email correspondence in support and against this item. The second email will be sent to the Task Force, as it was received immediately prior to the meeting. *Note: In total four pieces of correspondence were received with three in opposition.*

Mr. Mackey noted that this request asks to allow for utility scale solar energy systems larger than are currently allowed in AZD. He added that the 2018 Comprehensive Plan states the County's desire to preserve and retain agricultural land. Currently, solar energy systems are limited to 5 acres in the AZD and are considered to be a form of development.

Staff recommended that the Task Force consider maintaining the current regulations that allow up to five acres of utility scale solar energy systems on farms in the AZD.

A member recalled there was some overall capacity, as it relates to soil types, in relation to utility scale solar panels, per the white paper by the Kent County Renewable Energy Task Force. Ms. Gerber added that the listed standards in the LUO do not have any language to that effect.

Another member raised support in keeping the current restrictions in place as the member did not agree that it would be a good idea to take agricultural land out of production in order to install solar panels.

The first member raised questions regarding whether 1-megawatt capacity of energy production on 5 acres would constitute utility scale production. Ms. Gerber agreed it would not. The member suggested revising the wording of "utility scale" as it may draw confusion.

Public Comment

Judy Gifford added that this was a false choice between saving the planet and covering farmland with solar panels; and, as climate change increases, farmland will need to be protected.

Paula Reeder felt a 5-acre limitation on solar production is short-sighted. She felt there may come a time in the near future for safe energy production.

Jim Moseman, resident of Chestertown, is opposed to such a change, and agriculture should be preserved. He cited alternate safe energy systems that are already available, and these agricultural lands should not be displaced for such a purpose. He also submitted his comments by letter.

Elizabeth Watson, resident of Chestertown, agrees with a member who felt the term utility scale was a misnomer and also is of the position that farmland should not be replaced with wholesale energy production.

Janet Christensen-Lewis of KCPA, supports the 5-acre solar production limitation and added that the term “utility scale” is defined by some solar lobbying groups as anything greater than 1 acre or greater than 20 acres.

Allen Davis, resident of Galena, noted that if farmland is turned into solar panel energy production, it will not go back to cropland. He supports the Staff recommendation.

The first member sought clarification that the County still allows for solar, but that where solar can be installed depends on the zoning. Ms. Gerber noted that the member’s statement was correct. It is permitted in several districts and a special exception in several districts. The member wanted to comment that this is an important fact to demonstrate that the County can be for renewable energy and at the same time weigh the value of land.

The Task Force consensus did not support utility-scale solar arrays in AZD beyond the currently permitted five acres. Some members expressed that referring to this number of solar arrays (five acres) as utility-scale is a misnomer, and that the term should not be utilized.

The meeting closed for a 10-minute break at 7:10 p.m. and resumed at 7:22 p.m.

- C. Review of TF1: Review the concept of reducing setbacks for agricultural structures to 200 feet except near current housing developments, incorporated towns, and villages. Review of TF 17: Review setbacks for buildings containing animals. Currently, this is 600 feet. Review for more flexibility. Maybe 600 feet from residential zoning districts or provide for an administrative variance process to reduce the required setback.

Ms. Gerber informed the Task Force that these two items have been combined as the two were similar enough and overlapped. She noted that the Land Use Ordinance has several provisions relating to setbacks which range from 100 to 600 feet. Many relate to animals and waste management.

Ms. Gerber noted that the Task Force had expressed a desire to simplify these restrictions and make them less confusing.

Staff recommended that setbacks for commercial poultry houses, feedlots, and confinement dairies remain at 600 feet. However, the Task Force might want to consider reduced setbacks for structures located adjacent to other farms. Staff also recommends that waste management structures located on farms other than the one where the waste was generated be reduced to 150 feet.

Staff further recommends that for animal husbandry-related uses, standards be developed to base setbacks on the number of animal units. An animal unit is generally defined as 1,000 pounds. Ms. Gerber noted that some animal unit equivalencies and information has been provided with the staff report.

A member raised a concern about using the term “feedlot.” The member noted that a better term would be Animal Feeding Operations (AFO). There are also Concentrated Animal Feeding Operations (CAFO). The member would take out the word “feedlot” and an AFO would cover all animals. The member agrees with keeping a 600-foot setback for larger operations as set forth in the Land Use Ordinance. Regarding the proposal to reduce setbacks to 150 feet for waste management structures other than farms where the waste is generated, the member was confused as to why the Department would want to do this because the structure is still a waste management structure, and it is still going to hold manure. The member was not in support of this recommendation. The member expressed that the chart with setbacks in the staff report was helpful. The member also suggested a step system of acreage (e.g., one, two, three, five, ten, etc.) with a specific number of animals allowed at each step, as opposed to a sliding or other type of scale with animal units.

Another member asked for confirmation that the 600-foot limitation dated as far back as 1989, because the member recalled a text amendment that was more recent. Ms. Gerber confirmed the 600-foot limitation does go back to 1989 and the later text amendment served to clarify the 600-foot limitation as it relates to waste management structures.

The third member discussed the protective benefits of having waste management structures.

The second member felt that 600 feet is restrictive, and this takes up a lot of capital and is not supportive of agriculture. As an example, the member noted that there would be no means for someone on an 80-acre farm to meet that requirement.

A fourth member added that there were times when a 90-acre farm would be allowed as a special exception.

The second member added a point that since most variances are granted, why is the County being so restrictive.

The fourth member added that the process allows the public to weigh in on the topic.

The third member felt that the variance process as it relates to this particular topic has a negative effect on agriculture. If the concern was about purchasers of property within an agricultural zone, the third member added that such a purchaser would know prior to purchase if there were waste management structures near the prospective property.

A fifth member asked Staff that if the member wanted to build a house and the set-back is 30 feet from the property line, and he wanted to seek a 16-foot set back, would the member be able to seek an administrative variance without having to go to the Board of Appeals or the Planning Commission for a

side-yard setback and whether the same would apply to chicken houses and agriculture. Ms. Gerber confirmed that would be possible via the administrative variance procedure. Ms. Gerber also confirmed that the Department has performed administrative variance procedures that pertained to waste management structures.

The fifth member noted that although some of the above-referenced rules have not changed for a long time, Staff has changed, and interpretations of these rules have changed. Ms. Gerber sought clarification and provided the member with examples in which a variance was denied when the hardship was created by the applicant noting that it is the characteristic of the property that generates the need for a reduced setback.

A sixth member sought clarification on whether the setback is from the property line or the structure. Ms. Gerber confirmed it runs from the property line.

Public Comment

Note: A total of 11 letters were received related to this topic. The letters were opposed to the elimination of rules, such as the 10% rule, supported current ag-related regulations in general, and supported 600-foot setbacks for waste management facilities. The letters varied in content and were mainly from farms.

David Hill voiced support with the first member regarding the member's position concerning the 600-foot setback as well as the second member's example of a 150-foot setback given the particular problems with that case. In regard to Animal Unit Equivalencies, Mr. Hill pointed out potential problems with enforcement of the number of animal units on any given property as that tends to always fluctuate. If the County utilized this process, Mr. Hill felt it would make the process more complicated.

A seventh member asked Allen Davis if he wanted to comment about locating poultry houses in the middle of his farm.

Allen Davis spoke of his experience attempting to obtain a variance and he was denied. He opined that the system is already difficult, the 600-foot setback is excessive, and the proposed chart makes the process even more difficult. He would be in favor if the setback requirements would be reduced in situations concerning farms and adjacent farms. In regard to manure storage structures, Mr. Davis was in favor of a 200-foot setback for those structures.

Janet Christensen-Lewis of KCPA, expressed that in regard to temporary uses related to management of manure, the State has a 200-foot requirement from anyone's house. She did not see a distinction on whether the farm is producing the waste or whether it was brought onto the property from a separate property. If you do have a permanent structure, a person has the opportunity to continue to leave that on the property as long as one wants. Living on a farm that is organic and gets a lot of chicken manure, the manure is noticeable when it is closer to the house, and it's not only the odor; the fly production at their house also goes up dramatically. She opined that the 600-foot setbacks are a good-neighbor policy.

Jennifer Debnam had a question seeking clarification regarding greenhouses in the AZD with zero setbacks and inquired if there were logistical problems with property maintenance based on this restriction. Ms. Gerber clarified that there was a 25-foot setback as it was an agricultural structure within the AZD. Ms. Debnam suggested that 25 feet may be something that should be revisited.

The fourth member inquired as to whether Staff had any additional comments pertaining to this agenda item. Mr. Mackey was of the impression that there really was not a lot of feedback from the Task Force on this item with the exception of waste management structures, poultry houses, AFOS and CAFOS. Mr. Mackey inquired if any member would like to talk about the sliding scale as it relates to animal units that was proposed.

Ms. Gerber informed the Task Force that Staff receives requests almost monthly by citizens seeking, as an example, to purchase five or six acres, so they can have animals. There are a few districts that have raising livestock and fowl as a special exception, such as Rural Character and Rural Residential District. In other districts, they need to have at least 20 acres. Approximately 10 years ago the Planning Commission looked at some of these issues concerning these “farmettes” and didn’t come to any conclusion, so this proposal was an attempt to start to address those concerns. Ms. Gerber added that the Task Force could always address this as a separate topic on the agenda as it is a question the department continuously receives and some inquirers indicated that if they cannot have animals, they will buy property in another County.

The sixth member noted his appreciation for Staff feedback, however, regarding setbacks, the member felt as if much of them appear arbitrary. Ms. Gerber added that in regard to the table provided, private stables which is up to four horses is allowed in several districts if there is a minimum of 2 acres and people have approached Ms. Gerber with inconsistencies on the fact that they can have a horse, but they cannot have other types of animals. Ms. Gerber noted these types of inconsistencies are difficult to explain. This also drove this agenda item to address the issue as well.

The first member added that a table could be created in which the number of animals could be based in comparison with the number of acres on a property insofar as the County already allows a number of horses in those zones. Ms. Gerber noted that the way the Ordinance is now, if a use is not listed, then it is prohibited. Ms. Gerber added the department is welcome to any new ideas from the Task Force on other approaches to this issue.

The fifth member added that David Hill raised a good point about nutrient management plans. At what point if you have two horses in your backyard, do you need a nutrient management plan. Ms. Gerber confirmed that the provision was subject to nutrient management plans.

Jamie Williams of the Kent County Economic and Tourism Development Department expressed that she felt that if a use is not listed, it should be permitted as opposed to prohibited. As a clarification, Ms. Gerber added there is flexibility in some uses to allow for changes in what people want or need.

The second member added that the member believes there is little distinction between the type of livestock and most people do not have any problems with their neighbors having these animals without County approval. The member voiced concerns from citizens that Kent County is too restrictive, and they would not move to Kent County based on these restrictions.

The fourth member added, anecdotally, that he has had the opposite experience noting prospective farm purchasers who visit Kent County regularly to look at farms.

David Hill added that there are situations, particularly related to 4H animals, in which people purchase horses or livestock and do not understand how much they eat or how much one has to clean up and take care of them and as a result, in many cases, these animals suffer and that is probably why so many of these items are in place. Mr. Hill added in the case of chickens, for example, most people have good

intentions, but find themselves in situations in which they need to dispose of chickens and there are not too many of these options available.

The second member added that the member believed there are exceptions in place for 4H animals, but felt it was still a person's choice whether they want the animal or not, better care will likely be provided by larger facilities because it is a business to them, and they are going to take better care of those animals. In closing, the second member added he contended the County needs to reduce the restrictions that have been put in place in the past.

In this matter, the Task Force did not come to a consensus; however, an overall approach to regulating the setbacks was brought forth. For the most intense uses (poultry houses, AFO, CAFO, and dairies) the current 600 feet was seen as appropriate; opinions varied on waste management structures. A stepped system of one, two, three, five, and ten acres was suggested as a way to allow small animals with an assigned total number of animals for each acreage as opposed to animal units.

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

VII. Adjournment

With no further business to discuss, Task Force Member Sam Shoge motioned to adjourn the meeting, seconded by Task Force Member Bill Sutton, and all were in favor. The meeting adjourned at 7:59 p.m.