



Comprehensive Rezoning & Update 2020-2021 Task Force

MEETING SUMMARY

Hybrid In-Person/Remote Meeting
Wednesday, November 10, 2021, at 6:00 p.m.

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

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

The following Task Force members were in attendance: Vice Chair Joe Hickman, Al Nickerson, Bill Norris, Bill Sutton,, Buck Nickerson, Cindy Genter (remote), Pat Langenfelder, Paul Ruge (remote), Sam Shoge (remote), Tom Mason, and Tyler Brown (remote).

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

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: Janet Christensen-Lewis; Judy Gifford (remote); Elizabeth Watson, FAICP; Ford Hall, Sr. and Paula Reeder. The meeting was also livestreamed, and anyone could listen to the meeting, via the County's website.

II. Approval of the Summary for the Task Force Meeting on October 27, 2021

The October 27, 2021, Meeting Summary was amended to include that Trey Hill had attended remotely and it was approved with correction.

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.

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.

Adopted on December 8, 2021

IV. Old Business

- A. PUBLIC FORUM to receive comments on the Task Force's recommendations
- B. Propose Task Force Recommendations

One Task Force Member expressed confusion about the 10% rule, concerned that much of the public may remain confused on topics under discussion, and whether greater clarification would be useful.

Carla Gerber clarified that the 10% rule applies only in the Agricultural Zoning District (AZD).

A second Member echoed the concern on confusion on this topic as well as other topics, including the keeping of livestock. A third Member indicated that an open and public forum has been provided and that considerable discussion of the issues has been had in the effort to keep the public informed.

V. New Business

A. Condensed and Reformatted Land Use Ordinance

Ms. Gerber outlined the manner in which the current zoning text has been reformatted in the way proposed by the planning consultant, Sean Suder. The uses within the individual zoning districts have been abridged and referenced to new sections inclusive of the full texts of the uses. No new information is provided, just a reformatting of the presentation. The staff memo notes that highlighting is used to emphasize specific districts that have the same or similar uses, such as agricultural, or uses that have differences in conditions between districts, such as public stable. These variations are to be addressed for the updated Land Use Ordinance (LUO). Another item to be addressed is placing all the Critical Area regulations into one section, including adding new processes to more closely match the State's model ordinance.

Mrs. Gerber asked for feedback on whether this format is the direction that was expected based on the previous presentation by the consultant. This document will be the base document from which Staff will work on text changes as has been discussed by the Task Force and on the consultant's side with best practices that he has knowledge of and the inclusion of illustrations and images for better communication.

William Mackey publicly commended Ms. Gerber for the incredible amount of work put into the document. Mr. Mackey further expressed his appreciation, remarking that condensing a code and saving a hundred pages is remarkable. With the attention to detail and the highlighted notes, it is easy to walk through the document and understand what is happening. A Task Force Member concurred with the appraisal.

Ms. Gerber added that a hard copy of the condensed ordinance has been printed and is available for anyone to visit and examine. The ultimate goal is that an online version in which a person can extract the sections needed will become available.

Janet Christensen-Lewis asked whether images and illustrations are to be added and how the textual changes are to be made. Ms. Gerber confirmed that illustrations are to be added and that proposed changes in the text will be done through Track Changes.

A Task Force Member asked about the term “general farming”, as it is found in the current text. Ms. Gerber stated that the term is typically interpreted to mean row crops or standard agricultural activities. The Member indicated that the term is rather inclusive and wonders whether a more specific definition is warranted. Ms. Gerber agreed that it can be considered for more precise definition as the update process moves forward.

Another Task Force Member asked for clarification of what is a Floating Zone. Mr. Mackey offered that such a zone is one that is not mapped but described, and there is a process by which an applicant may ask to have that zone applied to their property. The idea is that it’s an available zone that a public process can apply to the land. For example, planned unit developments and other flexible zoning districts may have floating zone requirements with specific conditions such as acreage or locational requirements. It may act as a “potential zone” in the code. After someone has applied, then it may be added to a map. Once added, then generally a product, such as development, is constructed and that remains on the land.

B. TF 2. Review elimination of the 10% rule (related to new agricultural subdivisions)

Ms. Gerber reviewed the previous discussion on this topic on August 25th, indicating that the inferred preference of the Task Force was to keep the 10% rule but allow some mechanism for flexibility. The drafted language includes the addition of a footnote that clarifies that adjustment of lot lines to lots approved prior to August 19, 2003, are not subject to the 10% rule, which is a practice and interpretation that the planning department has used over the years, and this practice is being explicitly codified. In addition, the section for variances and waivers will have a new waiver process for maximum percentage of a property in lots. Two alternatives are proposed. One is to have an administrative review process for subdivisions, or potentially the adjustment of lot lines, that can be viewed by the Planning Director and the Technical Advisory Committee and would not need to go through a public hearing process. Examples of those would be properties that are bisected by a road, properties that are being divided based on some natural feature, or instances where additional land is being added into an adjacent farm. The Planning Director or designee would have the option to refer an application to the Planning Commission if there were something about the application that needed additional review, but this review would allow for the simple cases to be processed quickly and allow those applicants to complete their projects.

For situations that are complicated, such as dividing a property for estate purposes or specialized agricultural operations, those would go to the Planning Commission for review to determine if it is appropriate to allow a subdivision for a lot that exceeds the 10% rule. Both waivers would start by the applicant submitting the application with supporting documents. It would then go to the Technical Advisory Committee for an initial round of review, which all projects do, and then, if going on to the Planning Commission, notice would be sent to adjacent property owners, the property would be posted, and then it would be heard by the Planning Commission. The recommendation is that it would only take a simple majority of the Planning Commission as opposed to road waivers, which require 2/3 majority. This is to allow for flexibility and for some review if necessary.

Ms. Gerber referenced the provided packet where there are examples of what the current waiver processes are for subdivisions, private roads, road front lots, and designated design standards, which may be compared with an added section addressing maximum percentage of property in lots for the 10% rule in the AZD. It includes the same provisions that would allow for the Planning Commission or the Planning Director to add conditions if necessary, if there is a lapse of the waiver, the project is not followed through on, if it needs to be amended, or if it needs to be appealed.

A Task Force Member asked for clarification on the Technical Advisory Committee. Ms. Gerber explained that it is a review body that is composed of planning staff, the Health Department, Public Works, State Highway Administration, Department of Natural Resources, Forestry, or any local or state agency that is involved with regulating land development projects. Ms. Gerber further explained that the Technical Advisory Committee has a standard meeting time, which is getting ready to become the second Wednesday of the month. An agenda is prepared, and a packet is sent out; then at the meeting representatives of the appropriate agencies can provide their comments and discuss projects in more detail. Afterward, a set of minutes are compiled and forwarded to recipients of the review packet. It's a mechanism to determine whether a project meets the requirements of our ordinances and whether there are items that need to be corrected. For minor projects that are corrected, DPHZ approves them. For projects that go to the Planning Commission or Board of Appeals, it's a mechanism to make sure the applications are complete, and the boards have everything that is required before being brought before a hearing.

The Task Force Members asked whether, when a project is brought before the Planning Commission, they get those comments. Ms. Geber affirmed that they are included in the Staff reports.

Another Task Force Member commended Staff for listening to the comments, both pro and con, and for putting the recommendation together, which seems to consider the issues when the 10% rule limited the actions that could be taken, which now, under the proposed revision, would be allowed. The 10% rule would remain in place, but there would be means of acquiring waivers under certain conditions, through either the Planning Commission or the Planning Director. The Member added that this is a good compromise position.

A different Task Force Member asked about the use of modern surveying equipment and its assistance in creating greater clarity in land use issues. A third Task Force Member responded that such tools help with specifying slope and the establishment of the buffer line in the Critical Area.

Another Task Force Member opined that many properties in the County that don't qualify for measures of keeping the land in agriculture, such as eligibility for agricultural preservation. The Member applauds the effort by Staff but contends that the 10% rule remains too restrictive and that there is already much of the agricultural land that is in preservation. The Member asked if seven was the maximum number of lots that could be created on an agriculturally zoned property.

Ms. Gerber clarified that, given enough acreage, a property owner in the AZD can subdivide to the maximum of one dwelling per thirty acres as the County was granted a waiver from the prohibition against major subdivisions in its Tier IV areas. Therefore, major subdivisions are possible in the AZD. The Member stated that the 10% rule is too restrictive of those who own smaller pieces of land and that it's not right that those who own larger properties control what others may do.

Another Task Force Member expressed appreciation for the work put into the proposal but opined that the waiver process may be affected over time with change in staff. The member expressed concern that the size of a new parcel that may be created is dependent on the size of the original parcel, that those larger tracts may produce larger subdivisions. The Member added that subdivisions in agricultural lands are not necessarily development, that what may be created is an increase in the number of farms. Concern was expressed that unintended subjectivity may be embedded in the proposed waiver process, that what may be allowed with the current Staff and members of the Planning Commission may not be with a future

composition. The Member expressed a disagreement with the 10% rule and asked whether other counties have a similar rule.

Ms. Gerber noted that Queen Anne's County has a 15% rule that is applicable to certain portions of the County and that 85% must remain in open space while 15% may be developed. Ms. Gerber offered that the phrasing for Kent County ordinances can be redirected to present it as 90% remaining in open space. The Member stated that there are 210 farms in Kent County with FSA numbers that are 20 acres or less and encouraged others to be forward looking and recognizing that agriculture changes and that those with a passion for agriculture should not be limited.

Public Comments

Paula Reeder stated that the 10% rule is ill advised and is an arcane rule that was adopted for the purpose of preserving open land. The question is whether it works and whether it's right. Ms. Reeder opined that the 10% rule continues to constrain the opportunities of appropriately managed land in the county. The variance process caters to people of means who understand the rules but leaves behind those less capable of dealing with the complicated and often extended process of pursuing a variance. Mr. Reeder asked why the process should be more difficult for some people. The process is fraught with potential for discrimination, something that should not be allowed. Ms. Reeder opined that limiting subdivision of land based on the size of the farm is inherently discriminatory and shouldn't be permitted. Open land is unquestionably an asset, but it can also be a liability and a handicap. Limits on personal owners' ability to determine how their land is used not only represents a handicap potentially for the farmer and his or her family, it also represents a handicap for the community. Ms. Reeder stated that this has been seen in a number of instances and asked the Task Force to reconsider inputs received from the opponents of the 10% rule and to abandon the variance process and to eliminate the 10% rule.

Janet Christensen-Lewis stated that in her previous comments from August 25th she supported the 10% rule and wished to see it retained but had not mentioned that she thought the Staff's recommendation was correct and should be followed and is pleased at how well Staff has incorporated almost all of the issues that have been brought up. The Task Force has to weigh and balance all of the input and will never be able to reach a position with 100% consensus on one position and that this is a compromise. Ms. Christensen-Lewis expressed her support of the Staff recommendation.

Judy Gifford agreed that the Staff has done a good job and that she supports their compromise, and she expressed concerns about comments that the Staff and the Planning Commission cannot be trusted. Changes have occurred over time and the guiding principles have been the Comprehensive Plan and the Land Use Ordinance and that governance requires trust in Staff and the public. Ms. Gifford stated that the variance process is easy and democratic and not discriminatory.

Elizabeth Watson stated that the program is not one for holding land for those who may wish to go into farming and encourages others to think about how land is put into preservation. About 35% of land in Kent County is fully protected, which includes ecological as well as farmland preservation. Through all the programs undertaken, healthy farming is being encouraged. Ms. Watson complimented the Staff and supports what they've done for the 10% rule and that it's important to revisit this, as it is mandated every six years.

A Task Force Member raised concern about inappropriate and accusational commentary during session. A second Task Force Member opined that the public is allowed to make comments. The Member went on

to state, regarding an earlier statement from the public, that, through the years, Staff has worked hard to be accommodating, fair, and helpful to all applicants and do not discriminate.

Ms. Reeder agreed that Staff does a wonderful job but contended that the variance process itself sets up a barrier, no matter how accommodating and helpful the Staff may be, to individuals' decisions to move forward on plans or objectives they would like to see realized. Ms. Reeder emphasized that that cannot be changed, that if people are not comfortable with the process, they will not attempt to use it. She stated that she did not want to be interpreted or thought to be accusing of the Staff of not being helpful to the public.

Jamie Williams cautioned that sometimes comments may be taken out of context and stated that what she heard from earlier comments was not a mistrust of the Staff, just that there would be different Staff and that everyone approaches things differently.

A Task Force Member opined on several topics: 1) the potential complexity of the variance process, it being easy if it goes one's way but not easy if it is not favorable to one's wishes; 2) that the future is unknown and that the decisions of today will have an impact on the future, which must be considered; and 3) that a preference for large-scale farms may limit the opportunities for those wanting smaller farms and that compromise is needed so as not to inhibit those ambitions.

A different Task Force Member commented that the compromise reached by Staff, regarding the 10% rule, did not disallow smaller farms but that it was a means of providing for either option. The Member also opined that future Staff, regardless of whom they may be, will need to follow established rules.

A third Task Force Member stated support for the Staff recommendation.

Cynthia McCann commended Staff for its recommendations and opined that the Task Force should decide whether it wants a compromise on the 10% rule and that there are other issues to further examine, those being that within the Agricultural Zoning District it is possible to carve out a lot for a family member, which is not the case in other districts, discriminating in favor of those who own land in the AZD, and the nebulous nature of estate planning and settlement, which are really broad terms, raising questions such as how many lots are given and what family members get a lot. The same holds true with specialized agricultural operations, which will have to be defined, and the review and consideration process by the Planning Commission. Ms. McCann advised that if the Task Force wishes to go forward with the recommendations presented that a legal analysis be conducted before any adoption.

A break was called at 7:18 pm.

The session reconvened at 7:34

Buck Nickerson agreed with the proposed compromise and asked for clarification on which subsequent lot in an earlier subdivision may retain the remaining development rights. Mr. Gerber stated that it's generally assumed that the larger property would carry the remaining development rights. Mr. Nickerson references Queen Anne's County in which for such a scenario the parent tract would retain the remaining development rights and suggested that Kent County adopt a similar practice, or at least discuss it. Mr. Nickerson asked for further discussion on whether woodland, which does not qualify under the definition of agriculture in the AZD may have some type of exception in the 10% rule.

Mr. Gerber responded that, under the proposed recommendation, separating woods from farmland falls under natural features, allowing a wavier based on the distinctive landscape variations. Ms. Gerber added that greater clarification may be added so that such divisions do not necessarily have to occur along the edge of landscape variation, an example being to separate a portion of wooded area rather than the entirety of such.

A Task Force Member asked for further clarification, whether on a 200-acre property with woodland one could sell 10 acres of woods. Ms. Gerber responded that it could be permitted and that a proposed subdivision would be considered on differing criteria. The first is whether it would meet base density. The second is whether the 10% rule applies. The Member pondered whether, and how, subdivided farmland can be kept in agricultural use. Another Task Force Member expressed concern about how that might be done, such as through deed restriction, which may impede someone purchasing a parcel that carries restrictions.

Another Task Force Member expressed concern that variances are made by decision and that, as those who make the decision change, the uncertainty of what may be permitted will fluctuate as well. An example scenario was whether a farm owner could divide and sell off wooded area. The Member stated that the process needs to be simplified.

Janet Christensen-Lewis commented that the proposed natural features provision in the recommendations addresses the concern raised in the earlier scenario. Ms. Christensen-Lewis expressed concern on the possibility of limited or no regulations, which would be undesirable.

Mr. Mackey reminded all present that the next meeting would be on the evening of December 8th and that it's hoped that there will be a presentation from the consultant, who will use the base document to work on the changes as put forth in the diagnostic report and earlier recommendations.

V. Adjournment

Vice Chair Hickman adjourned the meeting at 7:50 pm.