

The CLUE

Calendar of Events

Wednesday, April 15, 6 pm

Citizens' Oversight Committee, new Comprehensive Plan (location TBD)

Monday, April 20, 10 am and 7 pm

Planning Commission (County Admin Building)

Tuesday, April 21, 7 pm

Board of County Commissioners (County Admin Building)

Wednesday, April 22, 7 pm

CLUA meeting (Port Deposit VFW, on MD 222 just north of town)

Tuesday, April 28, 7 pm

Board of Appeals (County Admin Building)

Tax Note: CLUA is a 501(c)(4) organization, which means it is itself tax exempt, but because we engage in lobbying and some political activities, **dues and contributions to CLUA are not tax deductible for individuals.**

In This Issue: Artesian Case Update (p. 1); Proposed Large Development Near Port Deposit (p. 3); Transportation Forum (p. 5); Maryland General Assembly bills (pp. 5 and 6); Zoning for Slots (p. 7).

Artesian Case Update

Unfortunately, the hearing in court on March 27 about the Artesian franchise agreements was entirely about procedural matters, and the substance of our suit against the county was not at issue. The county sought to have the case dismissed because it claimed that the actions of the Board of County Commissioners to approve the franchise agreements and the transfer county wastewater facilities to Artesian were legislative in nature, not administrative, and that therefore (1) the court had no jurisdiction, and (2) the plaintiffs (several individual land owners, together with ARCA and CLUA) had no standing to bring the case. The arguments by the attorneys centered on legal fine points about what

constitutes a legislative versus an administrative action, based on previous precedents in Maryland.

There was good attendance from ARCA and CLUA members but it is fair to say that this was not what we were expecting.

The judge promised to issue his ruling the first week in April. We are still awaiting that decision. Meanwhile, the transfer of the county facilities to Artesian moves forward. Here are some notes from Ed Cairns on the relationship between the Artesian franchise agreements and the new Comprehensive Plan:

Last night I attended the Water Resources subcommittee meeting for the new Comprehensive Plan. Scott Flanigan, director of county DPW, and Joe DiNunzio from Artesian described what's going on with water and sewer service in Cecil County.

1. Both parties' first priorities are working toward and expecting to officially transfer all the franchise properties from Cecil County to Artesian on June 30th.
2. The county DPW is basically out of the water business; they are doing some planning to upgrade Seneca Point to possibly serve Rising Sun and Port Deposit, in addition to future growth-corridor areas in western Cecil County, and are working on the east-county transition of facilities to Artesian.
3. DiNunzio showed a map of Cecil County and adjoining Delaware areas which denoted what he called their Elkton West franchise area — which included the so-called "future service area" bordered by Fair Hill NRA, MD 273, and the Delaware line (which is the ARCA/CLUA area of concern). When I questioned whether this area had been officially designated and approved by the County and the state Public Service Commission, he hesitated and said it showed the service areas of the plants they were purchasing from the County. (Their rebuttal to our PSC appeal had specifically excluded this area — they, like the Commissioners, are conveniently two-faced.) And he did describe the designated area on their map as part of the County's growth corridor, so now we have been put into the growth corridor by Artesian in spite of the fact that the Comprehensive Plan Citizens' Oversight Committee has designated our area as low density transitional.

DiNunzio also downplayed my concerns about reliability of out-of-state water supply — especially in the event of severe drought.

It seems that our often-stated fears — that Artesian will take over deciding where residential growth will occur in eastern Cecil County to serve their own purposes — are quite well founded. Unless our suit overturns the franchises, the northeast corner of the county is highly likely to become part of the high density future growth corridor of Cecil County.

Proposed Large Development Near Port Deposit Raises Many Questions

A proposal for a 700-home development that borders the town of Port Deposit has surfaced within the past few months. The land is owned by the Arundel Corporation and currently about half of it is in agricultural production. The remainder is fairly steep and is mostly wooded. The property, which is on the north side of MD 276 just short of Port Deposit, is zoned Suburban Residential. The developer proposes a Planned Unit Development (PUD) with community water and sewer. The water would come from the Susquehanna River, which requires permission from the Susquehanna Basin River Commission.

Among CLUA members, Charles Herzog, Rupert and Cynthia Rossetti, and I have been following this proposal as it begins the county processes for approval. We have expressed many concerns about both the plan itself and the process. Citizens of the town of Port Deposit have also recently become involved. Currently, the developer is seeking a Special Exception from the Board of Appeals (which meets on April 28) to build the PUD. Last month the Planning Commission, in a non-binding recommendation, voted to *not* endorse the exception. Here are some of our concerns:

1. First, the size of this proposed development is massive, and the full implications of that have not been considered. This development will, at build-out, be at least twice as large in projected population as the town of Port Deposit, which it adjoins, and taken alone, it would be either the 4th or 5th largest town in Cecil County. It will pour hundreds of cars per day onto local county roads (by the developer's own traffic study) and hundreds of students into the local county schools (see point 4 below). It has the potential to change the character, demographics, and politics of the town of Port Deposit. Yet the developer has apparently made no effort to engage the local community in his plans and there have been no public meetings at which the full ramifications of this development have been discussed, or the concerns of citizens or public officials addressed.
2. The development will go on land that is now partly wooded and partly agricultural, and drains into Rock Run, which runs through Port Deposit. It will place a large area of impervious surfaces into that steep watershed several hundred feet above the town. On July 12, 2004, a severe thunderstorm turned Rock Run into a raging torrent that caused severe flooding and property damage in Port Deposit. (Rupert has several copies of a DVD of this event; the movie is quite alarming.) Placing a huge housing development on the land that drains into the run could make a similar weather event even more catastrophic. Given the 2004 event and the well-documented effects of development on flash-flood potential, a decision to approve this development might very well make both the developer and the county liable for future damage from storm runoff.
3. The effect on the Bainbridge property, which is literally just across the road, has also not been considered. Many hours of planning by many people in this county over many years have gone into Bainbridge. It may well be the case that two developments side-by-side at that location are not both economically viable. That is, approving Granite Cliffs might kill Bainbridge. If so, all the work by the Bainbridge Development Corporation toward a carefully planned, multi-use community would be down the drain. At the very

least, the two developments need to be considered together, in the context of growth in and around Port Deposit. This development should not go forward without the involvement of BDC, something that has not happened.

4. The developer estimates that this development will bring in almost \$1.8 million in county taxes each year. That may seem like a lot of money until the costs to the county are subtracted. The county school system spends \$4000 of county money on each student each year, in its existing facilities. If this development of 700 three- and four-bedroom homes sends more than 450 students to county schools, the projected tax revenue will be all used up just for education. And if it sends more than 370 students to county schools, then at least one of the three local schools (and possibly all three) will be over-capacity, even assuming no other sources of enrollment growth. The full costs to the county of this development have not been assessed.

5. The developer proposes that the water and sewer system for this development remain private and funded by the homeowners' association. Yet our county has a high rate of failure in homeowners' associations, as the Planning Commission has documented. At TAC, the county Department of Public Works suggested that the county assume the responsibility for running the system. If the county ends up operating the water and sewer system, either by plan or default, who will pay for that? This development should not move forward without a commitment to establishing a special taxing district for this development, to ensure that current county taxpayers do not end up footing the bill. No such commitment is on the table.

Granite Cliffs is a prime example of piecemeal consideration of growth; that is, we consider one development at a time as though they were all in isolation. There is little regard to the effects of each development on the surrounding community, the broader natural environment, other plans for the area, or county taxpayers. This plan should not be taken in isolation — at the very least, both the Bainbridge Development Corporation and the town of Port Deposit need to be brought into the process as active players. This development is of such a size that it should not go forward without a process in place to properly assess all aspects of what is being proposed. The developer has shown little interest so far in such a process.

The Board of Appeals will consider the special exception request from the developer on April 28. Public comment at the meeting, or letters to the Board prior to the meeting, are needed.

Interested in the Octoraro Branch RR? John Stevenson of the Oxford Area Transit Services (OATS) will speak about the 150th anniversary of the Octoraro branch railroad (and its possible revitalization) on Monday, April 20, at 7:30 p.m. at the meeting of the Colora Civic Association. The meeting will be in the church hall of Mt. Pleasant Methodist Church, 1713 Liberty Grove Road (at Love Run Road), Colora.

Transportation Forum Scheduled for May

A Transportation Forum will be held on Thursday, May 21st at 6:30pm at Perryville Library. The Cecil County Young Democrats and Cecil County Young Republicans will be co-sponsoring the forum. We plan to give WILMAPCO the floor for an hour to start off the meeting. The second hour will be dedicated to a panel discussion with the Cecil County Commissioners, County Planning Commissioners, and the Cecil County Delegation regarding the issues presented. The event is still being planned, but we hope that many representatives from these groups will be able to participate.

— Ted Patterson

Smart Growth With Accountability and Flexibility Wins Committee Approval

Bill Would Produce Real Progress After 12 Years of General Goals

By Tom Zolper (Chesapeake Bay Foundation, March 26, 2009)

ANNAPOLIS: The Chesapeake Bay Foundation applauds legislation approved by the House Environmental Matters Committee today that sets a specific goal for managing growth in Maryland, and holds local governments accountable for progress, while also giving them maximum flexibility to achieve the goal.

“Legislators understand the time has come for a new approach. After 20 years of striving for smarter growth in Maryland, we need to establish measurable standards and meaningful accountability,” said Delegate Stephen Lafferty (D-42), the sponsor of key amendments to HB 295, legislation proposed by Governor Martin O’Malley.

“All towns and counties in Maryland have wonderfully sounding plans to grow smart, but too few have made progress,” said Kim Coble, Maryland executive director of the Chesapeake Bay Foundation. “As a result runaway development is polluting the Chesapeake Bay and its tributaries, and spoiling our communities.”

The bill sets a specific goal for local governments to focus 80 percent of their future residential development in areas that already have roads, sewers or other infrastructure to support growth, rather than let that growth sprawl into unspoiled forests and farm lands. Localities would be given the freedom and support to fashion their own means to the goal.

The bill was approved 10-8 in the committee, with four members abstaining. State law since 1997 has directed local governments in general toward concentrated growth areas, called Priority Funding Areas. But many jurisdictions have made little or no progress, and often the jurisdictions do the opposite approve development that devours huge tracts of

natural areas. Such growth costs taxpayers more in road construction and maintenance, school bus transportation and other costs. It also produces stormwater pollution, the only form of nitrogen pollution increasing around the Bay.

Under the bill approved today, towns and counties that make progress toward that goal would get a priority in state funding. Maryland Department of the Environment also would be required to withhold or alter permits for construction in rural areas from local governments which make no progress at all over time.

[The bill passed the House, 95-42, and is now in committee at the Senate. Status: see <http://mlis.state.md.us/2009rs/billfile/HB0295.htm>]

Maryland Senate OKs septic system measure

Bill to require nitrogen-removing technology heads to House of Delegates

By Timothy B. Wheeler (Baltimore Sun, March 31)

Moving to correct a major water pollution problem in some portions of the Chesapeake Bay, the Maryland Senate agreed Monday to require nitrogen-removing technology on all new or replacement household septic systems near the shoreline. Under the bill, which was narrowly approved, the state would cover the extra cost of replacing a failing septic system with an enhanced one capable of removing nitrogen from household wastewater.

But homebuyers would have to bear the added cost of about \$5,600 for an enhanced system when building a house along the shore [in the Critical Area, within 1000 feet of a tidal shoreline]. The measure now goes to the House of Delegates, where its future is uncertain. Sen. Michael G. Lenett, a Montgomery County Democrat and the bill's sponsor, said that the septic system measure was needed to restore the bay. "We know what we need to do," he said. "Now we are just talking about costs." He said that if new development continues along the bay's shores without added pollution removal, at the same time the state struggles to clean up existing pollution, the bay will never come back.

Though septic systems account for only 5 percent of all the nitrogen fouling the bay, they are a significant source of pollution in rural and some suburban waterfront areas where homes have been built beyond sewage treatment networks. Officials estimate that the 40,000 septic systems in Anne Arundel County, for instance, generate more of the nitrogen getting into local waterways than is discharged by the county's sewage treatment plants

Bay advocates hailed the Senate vote, which comes as state and federal officials look for new ways to jump-start the stymied restoration of the Chesapeake. Only three counties now require nitrogen-removing septic systems on new waterfront homes - Anne Arundel, Queen Anne's and Worcester. The bill passed by the Senate would extend the requirement statewide - a major shift in policy. A decade ago, a bill that would have

required de-nitrifying systems on all new homes failed to get out of committee in the face of opposition by Realtors and builders.

The same groups oppose this bill, arguing that having to put in more expensive septic systems will drive away some new-home buyers at a time when the building industry is in the doldrums. Advocates, however, argued that the septic system represents a fraction of the overall cost of a new waterfront home.

For the past few years, the state Department of the Environment has been providing grants under a voluntary program to encourage homeowners to upgrade their septic systems with nitrogen-removing technology. Funds for the program come from a \$30 annual fee levied on all 420,000 homes that are on septic systems. The state has underwritten 638 septic upgrades, 346 of them along the waterfront. But officials estimate that there are about 51,000 homes on septic systems in the "critical area," the environmentally sensitive strip of land within 1,000 feet of the bay and its tributaries. About 240 of those septic systems are repaired or replaced annually, according to MDE spokeswoman Dawn Stoltzfus, but the agency estimates that almost three times that number actually fail in any given year and should be replaced.

[This is SB 554 and is currently in committee in the House. Status: see <http://mlis.state.md.us/2009rs/billfile/SB0554.htm>]

Zoning for Slots Approved

Last month, the Board of County Commissioners approved a change in the county zoning ordinance that would allow slot-machine facilities in four types of zoning in the county. It is believed that this change will not be used in the foreseeable future because the currently proposed slots facility in Cecil County is probably going to be built within the town limits of Perryville, just north of I-95 exit 93. Therefore, Perryville zoning and building approval procedures will be used.

The approved change in the zoning ordinance follows (Note on zoning categories: BG = Business General, BI = Business Intensive, M1 = Light Industrial, M2 = Heavy Industrial).

Section 161. Video Lottery Facility

Video lottery facilities shall be permitted in the BG, BI, M1 and M2 provided:

1. The facility has access directly from a collector or arterial road and not a local road.
2. The use is located at least 200 feet from any residential zone and a bufferyard meeting the E 0.60 standard of Appendix B is provided between the facility and any residential zone. A fence at least 6' in height that occludes the view of the facility from residential properties is included with the berm.
3. Automobile parking spaces are located at least 200 feet from any adjacent

residential zone.

4. Restaurants, hotels, entertainment venues and retail commercial may be established in connection with said use and must be included on a major site plan submitted.

5. All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute a direct intrusion into a residential area.

Let us hear from you!

The CLUE belongs to you. We'd like to know what you have to say. What are your concerns and interests regarding Cecil Land Use? Tell us about your pet peeves, your ideas for improvement, people you'd like to praise, process suggestions, new problems identified, new opportunities arisen, or new challenges to face. Speak up, and share with us. Write to the interim editor at gkaplan@zoominternet.net

The Cecil Land Use Alliance newsletter is published periodically under the auspices of the Board of Directors. It is provided to all members, directors and available to the public at large. Suggestions and articles are welcome. They should be submitted to the editor by e-mail to gkaplan@zoominternet.net, or by mail to P.O. Box 215, Coloma MD 21917. We encourage our readers to visit our website at <http://cecillanduse.org>

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