

# The CLUE

## Calendar of Events

### **Mondays, November 9, 16, 23, and 30, at 6 pm**

Planning Commission Worksessions (County Admin Building) *The draft new Comprehensive Plan*

### **Tuesday, November 10, 7 pm**

CLUA Meeting (Rising Sun Library) *The year in review, results of the CLUA membership survey, and our strategy for the future*

### **Monday, November 16, at 12 noon and 7 pm**

Planning Commission (County Admin Building)

### **Tuesday, November 17, at 7 pm**

Board of County Commissioners (Perryville Town Hall)

**In This Issue:** CLUA Meeting to focus on survey, strategy (p.1 ); Smart growth failure (p. 2); Court blocks development in QA County (p. 2); Comp Plan tools (p. 3); Conowingo dam danger (p. 4)

## **Where Have We Been? Where Are We Going? CLUA Meeting Nov. 10 to Focus on Survey and Strategy**

Thank you to everyone who participated in the CLUA online survey last month. We had a very good response, about half of the entire mailing list, which is quite good.

The CLUA meeting on Nov. 10 in Rising Sun will focus on an analysis of the responses to the survey and a discussion of how CLUA should move forward. We will also discuss what has worked for us in the past and what hasn't. Your participation in this meeting is very important. During 2010 we are looking toward county elections, the finalization of new Comprehensive Plan, a decision on charter government, the comprehensive rezoning of the county, and the likely increase in development activity as the economy rebounds and the BRAC influx begins in earnest. Clearly 2010 will be an "all hands on deck" kind of year for CLUA. We need your thoughts on what's most important and how to tackle these challenges. See you on the 10th!

## Smart Growth Not Working

(Is this News?)

This was the pronouncement of the Smart Growth Center at the University of Maryland. This research and policy group, that continued efforts toward Smart Growth after the Glendening administration left office, points to local desire to maintain growth control as well as some failings in the law for the failure to stop sprawl and accomplish redevelopment. Maryland has been recognized as a leader in putting policies in place and continuing to enhance them at the state level. For more see:

<http://www.wtop.com/?nid=598&sid=1800964> or <http://tinyurl.com/yhkwupn> .

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AUGUST 27, 2009

## Court Blocks Shore Development

Tim Wheeler [WEBLOGS.BALTIMORESUN.COM/.../COURT\\_BLOCKS\\_SHORE\\_DEVELOPMENT.HTML](http://WEBLOGS.BALTIMORESUN.COM/.../COURT_BLOCKS_SHORE_DEVELOPMENT.HTML))

Plans to turn a 275-acre farm near Chestertown into a housing development got a setback this week when Maryland's highest court said Queen Anne's County officials had improperly approved the project. Now residents there may get to find out if their publicly adopted growth plans have any teeth.

This week's ruling, in *Grasslands Plantation Inc. v. Frizz-King Enterprises*, is one of the first court cases to come in the wake of the Terrapin Run decision last year, in which the Court of Appeals ruled that local officials need not hew strictly to their growth plans in deciding whether to approve specific developments. In that case, developers argued their 4,300-home project in eastern Allegany County was "smart growth" because it was compact, but opponents pointed out the homes would be built in a rural area on a scenic highway near a state forest. far from any existing public water or sewer.

This is one of those seemingly dry, bureaucratic issues that ought to matter to anyone who cares about what gets built where in their community. Every city, county and town in Maryland is required to adopt a "comprehensive" plan meant to guide growth, and the plan is supposed to reflect public input.

In this case, Queen Anne's County's board of appeals had approved building 51 homes on the farm, over objections from a neighboring landowner, who pointed out it was outside the county's designated growth zone. As I reported [in the blog](#) earlier this year, county voters elected slow-growth officials who subsequently adopted an ordinance requiring that developments "conform" to the county's comprehensive plan.

Now, the Court of Appeals has overturned the county's prior approval of the project and sent it back for re-hearing, citing errors made by the board. And the high court specifically directed the local board to weigh whether this development conforms to the county's comprehensive plan under the new local law.

Since this case was argued before the Court of Appeals, the O'Malley administration won legislative approval of a new state law requiring local officials to follow their growth plans

in making development decisions. It's unclear if this will settle the issue - in its Shore development ruling, the high court specifically avoided commenting on it. To read the case: <http://mdcourts.gov/opinions/coa/2009/117a08.pdf>

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## Tools and Measures in Comprehensive Plan Implementation

The last chapter of the Comprehensive Plan Recommendation of the Citizens Oversight Committee describes steps needed for implementation. It covers funding mechanisms, the water and sewer requirement for the growth corridor, and the potential administrative work for the planning and zoning department and other parts of county government. Growth management aspects get a nod with recommendations to simplify Planned Unit Development, more incentives for Transferable Development Rights, and most importantly a measure of rural development to total development in the county. This measure was proposed as a limit on building permits in the rural areas that was no more than 20% of the total of the prior year's building permits issued. Additional discussion increased the ideas for how a measurement might be done. See the detail from the recommendations in italics below. It is clear that creating a measure that is simple to understand and fairly quick to calculate will allow all interested people to see movement from 50% rural development which we have experienced in the last ten years. And because new state legislation requires measuring and reporting on comprehensive plan conformance, it provides a start in measuring success.

### **3.7 Policies and Actions**

1. ...

*3. Consider a growth management policy to ensure that development in rural areas does not exceed a desirable share of overall county development. Between 1997 and 2008 approximately 50 percent of Cecil County building permits were issued for development in growth areas and 50 percent for development outside of growth areas (not including towns). This Comprehensive Plan, while not adopting a specific desirable share number, recognizes that 50 percent of development outside growth areas exceeds the desirable share. This share should, more likely, be in the range of no more than 10 to 20 percent. Following adoption of the Comprehensive Plan, appoint a broad-based committee to recommend a plan and related ordinances to implement this policy. The plan should consider the following:*

- What the desirable growth areas versus non growth areas shares of development should be, and how they should be measured, in acres or in lots, for example.*
  - Whether the policy should be implemented through building permits or through the lot creation (subdivision) process.*
  - A provision that would, in addition to the non growth areas share of development, permit the approval of residential building lots (perhaps up to two) between parents and children, or grandparents and grandchildren.*
  - A fair and equitable queuing system for allocating building lots/dwelling units among competing residential projects. This might include phasing of development in large residential projects in non-growth areas that might, on their own, take up a large proportion of the available share of development.*
  - Allowing periodic (annual or biannual) review by the County Commissioners of the policy, share numbers, and implementing regulations.*
- The results of this effort should be coordinated with the State's Smart, Green and Growing requirements for an annual report beginning in 2011, establishing a goal and*

documenting the amount of growth occurring inside and outside of Priority Funding Areas.

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**Cecil County Comprehensive Plan  
Citizens Oversight Committee Recommended Plan  
October 2009**

For the complete plan, see <http://tinyurl.com/yjkktm5> . The Planning Commission is currently reviewing the plan in its worksessions, every Monday at 6 pm.

— Nancy Valentine

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## **Dam's Dangerous Legacy**

### **License renewal for Conowingo should depend on a plan to deal with silt problem**

By David Berry

From *The Baltimore Sun*, Nov. 3

The Susquehanna is arguably the most important river in the Chesapeake Bay's watershed. Its two branches drain 27,500 square miles of the bay's 64,000-square-mile watershed. By the time the river reaches the bay at Havre de Grace, it has traveled 448 miles, and it will deliver 25 billion gallons of water to the bay on an average day.

But there are no average days. Water flow ranges from a record 650 billion gallons in a single day to less than 2 billion during a drought. Over the course of a year, half of the fresh water that's so vital to an estuary such as the Chesapeake comes down the Susquehanna.

Twelve miles upriver from the mouth of the Susquehanna is the Conowingo Dam. One hundred feet high and over a mile wide, the Conowingo was opened in 1928 and has been the cause of various problems since its beginning. None may be more important to the long-term health of the Chesapeake Bay than the 144 million tons of silt trapped behind the dam, with more accumulating every year.

Three and half million pounds of phosphorus and 2 million tons of dirt settle behind the dam annually. The runoff from hundreds of communities and thousands of farms, as well as numerous roads and parking lots, ends up behind the dam. It's estimated that 15 percent of the sediment is residue from Pennsylvania's coal mining history.

Hurricane Agnes in 1972 scoured out most of the sediment and created one of the largest ecological disasters in Chesapeake Bay history. Barring another Agnes-like disaster, the United States Geological Survey estimates that the remaining storage capacity behind the dam, about 30 million tons, will be filled by 2025. The sediments will have nowhere to go then but through the dam, impacting the Chesapeake Bay.

Experts say that a plan must be put in place, but even a survey of sediment management

options would cost \$2.5 million. Many say that the money would be better spent on erosion measures upstream to slow the volume of sediments settling behind the dam. But Michael Helfrich, the riverkeeper for the Lower Susquehanna River Valley, points out that much of the potential damage is already in the river. He believes the area behind the dam will have to be dredged to give projects upstream a chance for success, and has applied for a grant to learn if the sediment can be safely used in the construction industry.

Mr. Helfrich feels - and many others agree - that the dam's upcoming license renewal in 2014 provides the best opportunity to find a solution.

There is a precedent for using the licensing process to achieve environmental goals. Shad advocates used the dam's 1970s renewal to force Philadelphia Electric, the dam's owner at the time, to build new, improved fish ladders to allow migrating shad to move above the dam to spawn. A law judge with the Federal Energy Regulatory Commission ruled that "fish passage was a cost of doing business on a river containing anadromous fish populations."

Exelon, the current owner, needs to recognize that the problem of silt is its to deal with. The company is the beneficiary of the revenue and should bear the responsibility and costs associated with the project. It should be required to invest in the studies and outline the plans to substantially reduce the volume of sediments behind the dam in order to maintain its continued operations.

Informed citizens need to make their concerns known to the appropriate regulatory agencies over the next 4 1/2 years, because this renewal will be good for 30 to 50 years, long past the time when Conowingo's pool can no longer trap sediment.

The problem is not going to disappear by ignoring it. It's going to take a major effort from everyone involved - Exelon, the public, the states and the regulatory agencies - to reduce the threat posed by the sediments trapped behind Conowingo Dam.

*David Berry lives and writes from Havre de Grace, where he also teaches sailing. He has written two books, "Maryland Skipjacks" and "Maryland's Lower Susquehanna River Valley; Where the River Meets the Bay." This article is distributed by Bay Journal News Service.*

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**Note:** CLUA is a signatory to a letter from the Lower Susquehanna RIVERKEEPER® to the elected officials of the Chesapeake Bay watershed, dated November 20, 2007, requesting funding for two USGS studies of the sediment deposits behind Conowingo Dam: one to determine the current amount and location of the sediments and the other to determine the upstream sources of the sediments. The letter states that "Sediment behind Conowingo Dam and the loss of its sediment retaining capacity represent imminent and substantial threats to the Chesapeake Bay." The full text of the letter is at [http://www.lowersusquehannariverkeeper.org/publications/ConSed\\_SignOnLtr.pdf](http://www.lowersusquehannariverkeeper.org/publications/ConSed_SignOnLtr.pdf) .

**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 editor at [gkaplan@zoominternet.net](mailto: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](mailto:gkaplan@zoominternet.net), or by mail to P.O. Box 215, Colora MD 21917. We encourage our readers to visit our website at <http://cecilanduse.org>*

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