

**MINUTES**

**Baltimore County Planning Board Meeting**

**July 21, 2016**

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***Note:** A copy of the appendices is located in the official Planning Board file.*

***Minutes***  
July 21, 2016

**Call to Order, Introduction of Board Members**

Chairman Phillips called the meeting to order at 4:47 p.m. The following members were:

**Present**

Mr. N. Scott Phillips  
Ms. Cathy Wolfson  
Mr. Mark Schlossberg  
Mr. Wayne McGinnis  
Dr. Chris Haffer  
Ms. Michelle Lipkowitz  
Ms. Nancy Hafford  
Mr. Todd Warren  
Mr. Scott Jenkins  
Mr. Howard Perlow  
Mr. Jon Herbst

**Absent**

Mr. Jeffrey Gordon  
Mr. Rick Yaffe  
Ms. Christina Berzins  
Ms. Lori Graf

County staff present included Andrea Van Arsdale, Jeff Mayhew, Lloyd Moxley, Jeff DelMonico, Kathy Schlabach, Chris Davis, Janice Graves from the Department of Planning and Dave Thomas from the Department of Public Works.

**Review of Today's Agenda**

Chairman Phillips asked if there were any changes to the tentative agenda. Staff stated that no changes were made to the agenda.

**Minutes of the June 16, 2016**

The Chairman asked if any changes had been made to the minutes from the June 16, 2016 meeting. Mr. DelMonico indicated that one change was made. Mr. Jenkins explained that he would like to correct and clarify a statement he made on the Hilltop Residential LLC Property URDL Revision. Originally, the minutes indicated that Mr. Jenkins said that the Planning Board did accept the DR 1 and DR 3.5 but that was incorrect. Mr. Jenkins explained that the Planning Board actually went with RC 5 and DR 3.5 and at the time he was only referring to the DR 3.5. Chairman Phillips called for a motion to accept the minutes from the June 16, 2016 meeting. Ms. Hafford made the motion and Ms. Wolson seconded the motion, which passed unanimously at 4:50 p.m. Absent were Mr. Gordon, Ms. Berzins, Mr. Yaffe and Ms. Graf.

**Other Business**

1. Report from the July 14<sup>th</sup>, 2016 meeting of the Landmarks Preservation Commission.

Mr. DelMonico gave a report from the July 14, 2016 meeting of the Landmarks Preservation Commission. He indicated that the LPC voted to issue ten certificates of appropriateness.

2. Recent County Council Legislation of Interest to the Board.

Mr. DelMonico indicated one piece of legislation may be of interest to the Board, County Council Resolution 70-16, which concerns the extension of the Metropolitan District Boundaries to include 27 acres of land on the east side of Berrymans Lane and south of Nicodemus Road in the Fourth Councilmanic District for the purpose of providing public water and sewer services. Mr. DelMonico explained that the Metropolitan District is a geographic area established by the Maryland General Assembly for providing public water and sewer services, as well as other public utility services. Mr. Phillips asked if this location is inside the URDL. Ms. Wolfson also questioned the location relative to the URDL. Mr. Thomas of the Department of Public Works clarified saying that the Dyer property is mostly inside the URDL but that the section which travels along Berrymans Lane, under which a water main would have to extend, is not. Mr. Perlow questioned if this issue had been before the Board at a prior time. Mr. Thomas affirmed it had but was withdrawn from the Board and that the County Council recently voted in favor of extending the district. Mr. Herbst asked if the issue was coming back to the Board. Ms. Wolfson indicated no, the resolution had already been approved. Mr. Thomas confirmed Resolution 70-16 was approved by County Council and is now subject to the review and approval by the Baltimore City. Mr. Perlow expressed his concerns about the process involved in making changes to the Metropolitan District. Chairman Phillips asked if the Planning Board had taken a vote on the expansion of the URDL for that property. Mr. Thomas recollected that the Dyer Property was withdrawn before the vote was taken but recommended the record be searched to confirm. Mr. Perlow asked who sponsored the resolution. It was confirmed through discussion among members that the resolution was sponsored by the Council Chair at the request of the Administration, that the issue is in Councilman Jones's district and that the Council vote was unanimous. Mr. Perlow requested the Board look into the issue further and discuss at a future meeting and that he was disappointed the Planning Board was not consulted. Mr. Phillips stated that Mr. Perlow's comments are appropriate and asked for the Director and staff to provide some additional information at the next Planning Board meeting. Mr. Thomas explained that the Metropolitan District does not normally come before the Planning Board but the Water and Sewer Plan does, as well as the URDL. All three were involved in this instance and it got quite complicated, stating it was appropriate to make the Planning Board aware. Ms. Hafford indicated more information was necessary, Mr. Phillips concurred. Mr. Thomas explained that Baltimore City's approval of the Metropolitan District change could take up to a year.

### **Adjournment of the Board meeting**

Mr. Perlow moved to adjourn the Board meeting. Ms. Wolfson seconded the motion, which unanimously passed at 4:57 p.m. Absent were Mr. Gordon, Ms. Berzins, Mr. Yaffe and Ms. Graf.

## **Items for Public Hearing**

### 1. Cycle 34 Water and Sewer Amendments

Mr. Dave Thomas, from the Department of Public Works, made a few statements before the Public Hearing began. He briefed to the Planning Board on the Cycle 34 Water and Sewer Amendments. He stated that there are two issues in Cycle 34, Hilltop Residential LLC Property and the VFW Gunpowder Post. Mr. Thomas gave a presentation showing the maps for both issues and giving an overview of the history for each location. There were no comments or questions from the Planning Board in regards to the VFW Gunpowder Post. Ms. Wolfson asked what portion of the Hilltop tract cannot be served with public water due to insufficient pressure. Mr. Thomas replied by saying that the tract is on the south end of the property and that the elevation of the property increases on the south side and the system cannot reach the necessary pressure level for that elevation. Mr. Perlow had questions about the URDL.

### 2. Hilltop Residential, LLC Property – URDL Revision

Mr. Moxley, Department of Planning staff, presented on the URDL in general and specifically on the petition to move it. Mr. Moxley explained that the URDL serves as a boundary between the urban and rural portions of the county, is a guidance tool to distribute development based upon Master Plans goals that the Planning Board has the authority to amend. Mr. Moxley gave a historical overview of the URDL. Maps were displayed showing the URDL in its present location and the potential location should the Board approve the Hilltop Residential, LLC Property request, affecting 13 acres more or less. The Hilltop site is part of the Comprehensive Zoning and Mapping Process (CZMP) numbered 6-025. The Planning Board voted to accept the staff's recommendation of DR 3.5 at 11.18 acres and 16.98 acres of RC5 zoning. Mr. Jenkins asked if issue 6-025 is passed by Council, and the Planning Board does not adjust the URDL, will the DR 3.5 be in the URDL. Mr. Moxley replied by saying that the DR 3.5 portion of the Hilltop property is currently within the URDL while the RC 5 is not. Ms. Wolfson wanted to know that if the Board rejects this URDL change request, would that be consistent with the Board's CZMP recommendation to the Council. Mr. Moxley indicated RC 5 is consistently outside of the URDL and that the DR 3.5 is consistently within the URDL. Mr. Perlow asked how many units per acre are allowed in RC 5. Mr. Moxley answered by saying that there is 1.5 acre minimum lot size. Mr. Warren wanted to know how much development is around it today. Mr. Moxley explained that there is one building located on the property and that it is next to a residential community. Mr. Haffer asked how many times since 1967 has the URDL been changed to understand if it gets changed regularly. Mr. Moxley pointed to language within the Master Plan counseling against significant changes to the URDL. Mr. Haffer amended his question to how many times the URDL has been moved since 2010. Mr. Moxley indicated URDL is typically amended to match the Water and Sewer Plan, which is commonly amended to address areas with failing wells and septic systems. Mr. Jenkins asked if the Council can zone an area to DR 3.5 if it is currently outside the URDL therefore forcing the Board to change the URDL. Mr. Moxley responded by saying that it would not be inconceivable for DR 3.5 to appear outside the URDL. Ms. Wolfson opined that if the Board recommends not to change the URDL and approves the water and sewer plan, isn't the Board effectively canceling out their recommendation on the CZMP issue. Mr. Moxley

responded the Water and Sewer Plan is separate from the URDL request. Mr. Phillips and Ms. Hafford confirmed that the Council can change the zoning but the zoning change would be ineffectual in the instance where the Board did not change the URDL. Mr. Moxley indicated the actions of the Council on the CZMP issue in August would have bearing on the Board's consideration and vote on the URDL request in September and that the Hilltop property is entirely within the Metropolitan District currently.

Mr. Scott Barhight, Esq. from Whiteford, Taylor and Preston spoke on behalf of the applicant. Giving an overview of the property, Mr. Barhight stated an observer standing on the property would not perceive where the URDL was, that it was zoned RC3 and technically rural because of its relationship to the URDL. He identified the property as fronting on Vincent Road and adjacent to MD 43 and IM zoning with large and small lot single family dwelling (sfd) residential development on the east side of MD 43. Mr. Barhight confirmed the Board's complete decision making authority over the URDL and authority to make recommendation on the Water and Sewer Plan. Mr. Barhight confirmed the RC3 zoning on the property and explained the intent of that zone is deferred planning (*Deferral of Planning and Development*) until other pieces of information are known. He stated that the RC3 zoning on the property is not a coincidence in that at the time the zone was put in place the final location of MD 43 was not known. He explained the subject property is partly composed of surplus property purchased from the State that was not needed in constructing MD 43. Mr. Barhight stated they would like to maximize the use of the property, obtain DR zoning of some kind on the entire property, amend the Water and Sewer Plan to allow water and sewer service to the properties public and to build single family homes.

Mr. Barhight suggested the Board was caught in the middle of the process and waiting until August 30<sup>th</sup> for the Council's decision on CZMP issue 6-025 to gain better guidance. Mr. Barhight indicated negotiations were underway between his client and area property owners and communications with the Councilwoman that may impact the decision of the Council. Mr. Barhight stated that they put in play every possible variable for the property as permitted under the County Code and that part of the property was in the URDL, all of it was zoned RC3, all of it is within the Metropolitan District and could be served by water and sewer.

Mr. Phillips had questions from a timing perspective asking why the URDL revision is being brought to the Planning Board now, with the Cycle 34 Water and Sewer Amendments, and could it have been done at another time. Mr. Barhight responded that yes the URDL request could be brought at another time but questioned the Board as to why not look at it together as a package, stating that the Board can make all its decisions at the same time. Mr. Moxley added that a revision to the URDL constitutes a change to the County's Comprehensive Plan, requiring justification be made to the Maryland State Department of Planning and when done in conjunction with an amendment to the Water and Sewer Plan is less problematic.

Mr. Haffer asked Mr. Barhight if he lived there and stated that people living in that area do know that it's rural. Ms. Wolfson asked that if the Board rejected the URDL request now could Mr. Barhight come back in the next cycle and repeat the request. Mr. Barhight answered yes, but that was not their intention.

Mr. Herbst asked if the Board does not move the URDL is the project still viable. Mr. Barhight stated that all parts would have to line up, zoning, URDL and Water and Sewer Plan in order to build homes on

water and sewer. Mr. Jenkins stated that the Board made the decision in May to make a portion of the subject property RC5 and therefore should stay outside of the URDL and then asked Mr. Barhight that if you wanted to do it all together, why not have the entire conversation in May as opposed to waiting until after the Council makes its zoning decision and in so doing taking real authority on the URDL away from the Planning Board. Mr. Barhight replied by saying that it was his decision to put the water and sewer request with the URDL with the CZMP being separate as that is how it made organizational sense to him. Mr. Jenkins asked if the Board could vote on the URDL request before August 30<sup>th</sup> with Mr. Phillips responding that no meeting being scheduled.

Mr. Perlow asked if Berrymans is in the URDL or not. Mr. Thomas replied that the Berrymans development site is within the URDL but Berrymans Lane is not. Chairman Phillips then asked if the only way to deal with the piping would be to include in Berrymans Lane. Mr. Thomas answered by saying that the city regulations require that the public water main may only be located under a paved public road. Chairman Phillips reiterated to Ms. Van Arsdale that the Board had extensive discussion on County Council Resolution 70-16 and would like more understanding of the prior URDL revision request involving Berrymans Lane. Mr. Mayhew explained that there were two requests in the same area for the previous proposal, one was a cemetery and the other was the Dyer Property. Mr. Thomas added that the cemetery was withdrawn and the Dyer Property involved Berrymans Lane. Chairman Phillips asked for an update at the September meeting. Mr. Warren admitted to a lack of understanding about the URDL and stated his personal issues with the URDL as it relates to segregation.

Mr. DelMonico then showed the Board an aerial view of the Hilltop property using My Neighborhood with discussions of surrounding development. Chairman Phillips asked about the elevation of the terrain. Mr. Mosco replied by saying that there is a gentle sloping to the north but it is not flat nor drastic in elevation. Chairman Phillips confirmed with Mr. Mayhew that the vote for these two items will be on September 15, 2016. Ms. Wolfson wanted to note that the Board did receive a note from Sandra Magsamen of the Bird River Community Association on the Hilltop Residential, LLC Property – URDL Revision. Chairman Phillips asked all members to take the letter and review it before the vote in September.

### **Adjournment of the Public Hearing**

Ms. Hafford moved to adjourn the Board meeting. Ms. Wolfson seconded the motion, which unanimously passed at 5:48 p.m. Absent were Mr. Gordon, Ms. Berzins, Mr. Yaffe and Ms. Graf.