

February 27, 2024

A meeting of the County Commissioners of Kent County was called to order at 10:00 a.m. with the following present: Ronald H. Fithian, President, Albert H. Nickerson, and John F. Price. The meeting convened with the Pledge of Allegiance. Commissioner Fithian asked everyone to remain standing for a moment of silence for the families of Mr. William “Bill” Sutton, Ms. Betsy Redmond, Ms. Patricia “Patty” Hastings, and Ms. Susan Martinez, all of whom passed away.

Shelley L. Heller, County Administrator, and Thomas N. Yeager, County Attorney, were also present.

PROCLAMATIONS

March 2024 is Endometriosis Awareness Month: Shannon Hannawald, Endo Warriors of the Eastern Shore gave an overview of Endometriosis Awareness Month. Ms. Hannawald asked the community to wear yellow on March 14, 2024, “Wear Yellow for Endo”. For more information, please visit endowarriorsoftheeasternshore.com. Commissioner Nickerson read the proclamation into the record and presented it to Ms. Hannawald.

2024 Girl Scout Week, March 10-16, 2024: Aly Keville, Director of Fund Development Girl Scouts of Chesapeake Bay requested a proclamation. Commissioner Price read the proclamation into the record which will be mailed to the main office located at 225 S. Old Baltimore Pike, Newark Delaware 19702.

CONSENT ITEMS

On a motion by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved the following items:

1. Regular Session Minutes, February 13, 2024
2. Liquor Minutes, February 13, 2024
3. Closed Session Minutes, February 13, 2024
4. Rock Hall Volunteer Fire Company, Multiple Gaming Devices, March 16, 2024
5. Chestertown Arts League, DBA RiverArts, Raffle Only, March 1-June 7, 2024
6. Kent School Parent Association, Raffle Only, March 22, 2024

PUBLIC HEARING – CODE HOME RULE BILL NO. 2-2024 TO RESCIND AND REPLACE THE LAND USE ORDINANCE IN ITS ENTIRETY

A public hearing was held for the proposed Code Home Rule Bill No. 2-2024 To Rescind and Replace the Land Use Ordinance in its Entirety. Public information regarding the hearing and minutes are posted on the County’s website <https://www.kentcounty.com/commissioners/meeting-agenda>.

PLANNING, HOUSING, AND ZONING

Bill Mackey, Director, and Mark Carper, LEED Green Associate, Associate Planner of

Planning, Housing, and Zoning (PHZ), Genevieve H.R. MacFarlane, Esq., of the Law Offices of Stevens Palmer, LLC, and Heather Hutton, P.E., with Kimley Horn, requested the Board to approve the draft letter in response to the Applicant's Notification of the Proposed 5 MW Utility-Scale Energy System in the Agricultural Zoning District (AZD). On December 18, 2023, Turning Point, by COMAR 20.79, *Pre-Application Consultation Requirement for Generating Stations*, submitted pre-application materials to the Department of Planning, Zoning, and Housing (DPHZ) and an initial meeting was held, regarding a proposed 5 MW utility-scale solar energy system that will occupy, including panels, fencing, and landscaping, approximately 40 acres in the AZD. The submitted materials include a concept site plan depicting the proposed solar array, perimeter fencing, and outlines of the landscape buffer; a draft Environmental Review Document; a glare analysis; and a forest stand delineation. The designated applicant is TPE MD KE51, LLC, and the site location is 10066 Peacock Corner Road, Millington, owned by William M. Chance, Jr., Successor Trustee. The 176-acre property is dual-zoned Rural Character (RC) and AZD and is bisected by Peacock Corner Road. Agricultural production is prevalent across much of the property. The submitted materials are available for public review in the DPHZ at 400 High Street in Chestertown during regular business hours. Under COMAR 20.79.01.05, the applicant has requested a preliminary report from Kent County containing (a) a statement or finding whether the proposed project is consistent with the current comprehensive plan of the county or municipal corporation; (b) a statement or finding whether the proposed project is consistent with the current zoning ordinance of the county or municipal corporation; and (C) suggestions for improving or modifying the application before submission of the application with the Public Service Commission. Discussion took place. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved the proposed Letter to the Applicant for signature by the County Commissioners.

KENT FAMILY CENTER

Lisa Mazingo, Director, Kent Family Center (KFC), advised that staff and the Judy Centers collaborate on programs and activities for families with children under the age of five. The Judy Center Early Learning Hub at Rock Hall Elementary (RHES) is the third and most recent Judy Center to open in Kent County. KFC, Kent County Public Schools (KCPS), and the Judy Center at RHES would like to enter a collaborative agreement for the 2023-2024 school year. Staff requested approval of a Memorandum of Understanding (MOU) with all agencies. Discussion took place. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved and signed the MOU between Kent Family Center and the Rock Hall Judy Center for the 2023-2024 school year.

Ms. Mazingo gave a brief departmental update that KFC currently serves twenty (20) Kent County families.

HUMAN RESOURCES

Jen White, HR Business Partner, and Vauné Johnson, Administrative Assistant, of Human Resources on behalf of Dan Mattson, Director of Public Works to fill the vacant Utility

Technician position. Discussion took place. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved a conditional offer of employment to the recommended candidate to fill the Utility Technician vacancy in the Water and Wastewater Division.

Ms. White and Ms. Johnson requested approval to fill one of the vacant Plant Operator III positions. Discussion took place. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved a conditional offer of employment to the recommended candidate to fill one of the Plant Operator III vacancies in the Water and Wastewater Division.

Ms. White and Ms. Johnson, on behalf of the Detention Center, requested to fill a Correctional Officer vacancy. This item was tabled at the February 13, 2024, meeting. Discussion took place. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved to table this request.

COUNTY ADMINISTRATOR

Shelley Heller, County Administrator, on behalf of Muriel Cole, Vice-Chair, of the Commission on Aging (COA), advised the Commission has several recommendations. The COA has one member vacancy to fill due to the resignation of Dr. Wayne Benajamin. In addition, three members' terms are up for reappointment. COA submits the following: 1) appoint Faye Everett and 2) reappoint Nancy Connolly, Olythea Hunley, and Mary Etta Reedy. Discussion took place. The Commissioners also signed a thank you letter to Dr. Benjamin for his service as a member of the COA. On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved the recommended Commission on Aging candidate as a new member and reappointed three (3) members for an additional 3-year term that will expire December 31, 2026, to the Commission on Aging.

Ms. Heller advised staff received correspondence from Geraldine Munson addressed to Mike Moulds, former Director of Public Works regarding the property Ms. Munson purchased at tax sale, ID05006864, Lot 1-acre E/S Piney Neck Road East of Rock Hall, also known as Map 51, Parcel 373. Ms. Heller stated Daniel Mattson, Director of Public Works, is reviewing Ms. Munson's file and will contact her.

COUNTY ADMINISTRATOR REPORT

House Bill 778 Natural Resources – Sunday Hunting – Migratory Game Birds: Shelley Heller, County Administrator, was instructed by Commissioner Price and Commissioner Fithian at the February 13th meeting to send a letter of opposition to the bill. Ms. Heller sent the letter on behalf of the Board to the Honorable Marc A. Korman and members of the Environmental and Transportation Committee. The District 36 Delegation were courtesy copy recipients of the letter. Staff uploaded the opposition letter to the Maryland General Assembly website as written testimony; the hearing was held on February 22, 2024. The bill was not cross-filed in the Senate.

Ms. Heller presented a Circuit Court for Kent County MOU for review. On October 3, 2023, Sherise Kennard, Clerk, and Kailee McCoy Dierker, Chief Deputy Clerk of Circuit Court, presented the 2021 Modified MOU extension (E21-0012-25K) for the Commissioner's review. The proposed MOU required Commissioners' approval and would then require Judiciary approval. The Judiciary has since approved the MOU and prepared an MOU with all specifics included. Commissioner Fithian signed the MOU on February 20, 2024, a copy was provided for the Board's information.

COMMISSIONERS COMMENTS

Commissioner Fithian asked Mr. Mackey to clarify whether the Critical Area Commission (CAC) or the DPHZ had questions regarding the Wharf at Handy's Point. Mr. Mackey stated the CAC had questions and is currently working with the property owner directly. Thomas N. Yeager, County Attorney, recommended that Mr. Mackey request a statement from the applicants to waive the County's 90-day decision. More information regarding this matter is noted below.

PUBLIC COMMENT

The procedures for public comment were in effect. No one offered comments.

FOR YOUR INFORMATION

A correspondence was received on February 8, 2024, from McKayla Grasham, Trileaf Environmental Architecture Engineering. The letter notified the County of a proposed installation of new antennas of an overall height of 13 feet on an existing 10-foot equipment shelter located at 5768 Liberty Street, Rock Hall, MD 21661. On February 20, 2024, notice of Section 106 filing submitted was received via email.

Mr. Mackey received a correspondence from MacLeod Law Group, LLC, dated February 23, 2024. On November 28, 2023, the Board of County Commissioners held a public hearing on the application for growth allocation for the Wharf at Handy's Point. Per Article III, Section 1.5 of Kent County's Growth Allocation Policy, the Commissioners must render a decision within 90 days of the hearing. In this case, the applicant has been in ongoing negotiations with the Maryland CAC on required mitigation related to the growth allocation application. The applicant plans to submit revised findings for review by staff and presentation to the County Commissioners. Provisions are generally adopted to protect applicants from delays. In this case, rendering a decision without findings would require rejection of the proposal and would not serve the interests of the applicant or the County. DPHZ staff will continue to work with the applicant to schedule an item before the County Commissioners for approval when findings are acceptable to the Maryland CAC and all items required by COMAR from the County related to an application for growth allocation are ready for review.

AMERICAN RESCUE PLAN ACT (ARPA) FUNDS

A copy of the ARPA Spend Plan outlining the approved expenditures to date was provided to the Commissioners for informational purposes.

CONTINGENCY FUND

The FY2024 Contingency balance as of February 13, 2024, is \$252,564.00. The FY2024 use of Fund Balance is \$128,255.00.

CLOSED SESSION

At 12:06 p.m., a motion was made by Commissioner Price, seconded by Commissioner Nickerson, and carried unanimously to go into a closed session. The meeting was closed under the Annotated Code of Maryland, General Provisions Article §3-305 (b) (1) To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals; (7) To consult with counsel to obtain legal advice; and (8) to consult with staff, consultants, or other individuals about pending or potential litigation. There are three matters to be discussed.

Shelley L. Heller, County Administrator; Thomas N. Yeager, County Attorney; Jennifer White, HR Business Partner, Human Resources; and Sondra M. Blackiston, Clerk/KATE Manager, were also in attendance.

MATTER NO. 1: PERSONNEL, LEGAL ADVICE, PENDING OR POTENTIAL LITIGATION

Topics to be discussed: A personnel matter, and legal advice concerning a claim.

Reasons for closing: The advice of counsel and legal claims are confidential, and certain details should be shielded.

Thomas N. Yeager, County Attorney, shared a confidential attorney-to-attorney communication. Mr. Yeager offered legal advice to the Board and Ms. Heller discussed options.

MATTER NO. 2: PERSONNEL

Topics to be discussed: Update on specific personnel matters.

Reasons for closing: The details of each personnel issue should be shielded for privacy.

Shelley L. Heller, County Administrator, offered updates involving personnel issues.

Jennifer White, HR Business Partner, Human Resources departed at 1:52 p.m., and all other persons remained.

MATTER NO. 3: LEGAL ADVICE, PENDING OR POTENTIAL LITIGATION

Topics to be discussed: Legal advice regarding a claim.

Reasons for closing: Legal advice and the details of specific legal actions are private to the public.

A copy of the complaint with exhibits was provided to the Board for their information. Mr. Yeager cannot represent the County in this matter. Ms. Heller recommended outside counsel. Discussion took place.

At 2:15 p.m., a motion made by Commissioner Price, seconded by Commissioner Nickerson, the Commissioners unanimously adjourned the closed session and reconvened in an open session.

OPEN SESSION

Commissioner Price summarized the following three closed-session matters:

1. Matter No. 1: personnel, legal advice, pending or potential litigation. The Commissioners held a lengthy discussion with counsel and staff on how to proceed with an ongoing personnel and legal matter.
2. Matter No. 2: personnel. The Commissioners received personnel updates from staff.
3. Matter No. 3: legal advice, pending or potential litigation. The Commissioners held a second lengthy discussion with counsel and staff on how to proceed with a legal claim. Counsel offered legal advice and staff made a recommendation to use outside legal representation. Mr. Yeager was instructed to provide the details of the case to the recommended outside counsel.

At 2:17 p.m., on a motion by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved to adjourn the meeting. The Board is scheduled to meet again on Tuesday, March 5, 2024, at 10:00 a.m.

Respectfully submitted,

Sondra M. Blackiston
Clerk

Approved:

Ronald H. Fithian, President
The County Commissioners
of Kent County, Maryland

February 27, 2024

The Board of License Commissioners met today with the following present: Ronald H. Fithian, presiding, Albert H. Nickerson, and John F. Price.

Shelley L. Heller, County Administrator; Thomas N. Yeager, County Attorney; and Bonnie S. Pearsall, Inspector, Kent Alcohol and Tobacco Enforcement were also present.

CONSENT ITEM

On a motion made by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved Consent Item #2 - Liquor Minutes, February 13, 2024.

SPECIAL CLASS C

Kent Association of Riding Therapy, Inc. has applied for a Beer and Wine only Special Class C (Per Diem) liquor license. They will be hosting a Murder Mystery Show to be held on March 16, 2024, from 6:00 p.m. to 9:30 p.m., at Worthmore Equestrian Center. Staff recommended approval. There being no objections, on a motion by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously approved the Special Class C (Per Diem) liquor license application for the Kent Association of Riding Therapy, Inc.

PUBLIC HEARING PROTOCOL

Mr. Yeager read the public notice into the record. Notice, an application has been made by Christopher J. Golder, Member, representing Shore Hospitality LLC for a Class B, Beer, Wine, and Liquor License with Caterer's Privilege (CP) and Corkage Privilege (CKP) on the premises known as, Flying Decoy Bar and Grill, which shall authorize the holder thereof to sell Beer, Wine, and Liquor at the place therein described, for on-premises consumption, or elsewhere. A hearing on the application will be held in the County Commissioners' Hearing Room, R. Clayton Mitchell, Jr. Government Center, 400 High Street, Chestertown, Maryland on February 27, 2024, at 10:00 a.m. at which time any exceptions to the application will be heard. The hearing was duly advertised.

Mr. Yeager reviewed the public hearing protocols. Mr. Yeager administered the Oath to applicant Christopher J. Golder, and Bonnie Pearsall, Inspector, Kent Alcohol and Tobacco Enforcement (KATE), and anyone wishing to testify. The rules for a public hearing were in effect.

SHORE HOSPITALITY LLC DBA FLYING DECOY BAR AND GRILL, CLASS B, BEER, WINE, AND LIQUOR LICENSE WITH CATERER'S PRIVILEGE (CP) AND CORKAGE PRIVILEGE (CKP)

The hearing commenced at 10:21 a.m. Mr. Yeager stated a legal review of the application for a Class B, Beer, Wine, and Liquor License was completed. The Flying Decoy Bar and Grill was previously known and operated as Bay Wolf Restaurant. Mr. Golder explained his business plan for the Restaurant and bar. Staff recommended approval of the application. No comments were offered in favor of or in opposition to the application. There being no objections, on a motion by Commissioner Price seconded by Commissioner Nickerson, the Commissioners unanimously approved the Shore Hospitality LLC, alcohol license application.

KENT ALCOHOL AND TOBACCO ENFORCEMENT (KATE)

Inspector Pearsall submitted a memorandum that supplied license updates for two establishments. A closeout inspection of Bay Wolf Restaurant was completed on January 31, 2024, and confirmed there was no alcohol on the premises, a bulk transfer was not applicable. License No. 4762 a Class B Beer, Wine, and Liquor license with EXPR (Extended Privileges) was voluntarily surrendered by license holders before its expiration date.

Inspector Pearsall conducted a routine inspection at Cafe Sado (License No. 4661), located at 870 High Street, Chestertown, MD 21620, and found that the establishment did not have anyone on the premises who could provide proof of being certified in alcohol awareness. This is a violation of Maryland Alcoholic Beverages Annotated Code Section 24-1903 which requires the presence of a certified person on the premises during the hours in which alcoholic beverages may be sold. The Board was provided with a copy of the written warning letter dated August 1, 2023, issued to Cafe Sado for being non-compliant. On February 1, 2024, Inspector Pearsall completed a routine inspection at Cafe Sado. During her inspection, Inspector Pearsall found that there was no one on the premises who was certified by an approved alcohol awareness program (TIPS, Training for Intervention ProcedureS certification). Due to the previous written warning given on August 1, 2023, they were issued a \$100.00 fine for this violation. The fine was paid on February 13, 2024. Inspector Pearsall informed the Board that three staff members of Café Sado have been certified in TIPS training since the violation occurred and are now compliant.

At 2:17 p.m., a motion was made by Commissioner Nickerson, seconded by Commissioner Price, the Commissioners unanimously approved adjourning the meeting. The Board is scheduled to meet again on Tuesday, March 5, 2024, at 6:00 p.m.

THE BOARD OF LICENSE COMMISSIONERS
OF KENT COUNTY, MARYLAND

Sondra M. Blackiston
Clerk/KATE Manager

Approved:

Ronald H. Fithian, President
The County Commissioners
of Kent County, Maryland

February 27, 2024

PUBLIC HEARING

County Commissioners Ronald H. Fithian, Albert Nickerson, and John F. Price were in attendance as well as Shelley L. Heller, County Administrator, Thomas N. Yeager, County Attorney, William Mackey, Director, and Carla Gerber, Deputy Director, Planning, Housing, and Zoning.

On a motion by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously agreed to open the public hearing. Thomas N. Yeager, County Attorney, read the notice into the record and the procedures for testifying. The rules for a public hearing were in effect. Commissioner Fithian waived the three-minute time limit for testimony.

CODE HOME RULE BILL NO. 2-2024, TO RESCIND AND REPLACE THE LAND USE ORDINANCE IN ITS ENTIRETY

The public hearing commenced at 10:27 a.m. in the County Commissioners' Hearing Room, R. Clayton Mitchell, Jr., Kent County Government Center, 400 High Street, Chestertown, MD. A public hearing to discuss Code Home Rule Bill No. 2-2024, To Rescind and Replace the Land Use Ordinance in its Entirety, AN ACT to rescind and replace in its entirety Chapter 222, "Zoning," of the Public Local Laws of Kent County, Maryland, renaming said Chapter 222 as "Unified Development Ordinance," also known as the Kent County Land Use Ordinance (referred to herein as the "2024 Ordinance"), to implement the recommendations of the Kent County Planning Commission on proposed revisions to the 2024 Ordinance, which are based on the Kent County Planning Commission's three-year review as part of the Comprehensive Rezoning and Update process; and including non-codified provisions to address scrivener's errors and readability; certain adopted maps; and required Critical Area Commission review and approval, per Md. Code Ann., Natural Resources § 8-1809, as the same may be amended from time to time.

William Mackey, Director, Planning, Housing, and Zoning summarized the intent of the legislation and the amount of time it has taken to be able to present the Land Use Ordinance to the Commissioners for consideration. Members of the public may view the proposed Land Use Ordinance in its entirety online at <https://www.kentcounty.com/compzone>. Discussion took place.

PUBLIC COMMENTS

Citizens were invited to sign the testimony log and offer comments on the proposed legislation.

The following audience members provided comments during the public hearing in support of Code Home Rule Bill No. 2-2024: Pat Langenfelter, Doug West, Chip MacLeod, Janet Christensen-Lewis, and Sean P. Jones.

The following audience members provided comments during the public hearing in support of Code Home Rule Bill No. 2-2024 but suggested amendments for the Commissioners to consider

before taking a vote: Tom Mason with an amendment to remove the 10% rule. Mr. Mason also provided copies of a petition he compiled in opposition to the 10 % rule. Debby Dopp with amendments to address Short Term Rentals. Ms. Dopp provided a printout of a page from the GovOS software contract for Short Term Rentals that was approved by the Commissioners during their February 13, 2024, meeting. Liz Heal asked the Commissioners to eliminate Critical Area Buffer Variances for the construction of new homes and accessory building(s) located in designated Critical Areas. Paula Reeder with an amendment to remove the 10% rule.

There were no comments provided in complete opposition to Code Home Rule Bill No. 2-2024.

WRITTEN COMMENTS

Dr. Diane Bansbach submitted a written comment before the public hearing, not in opposition to or in favor of Code Home Rule Bill No. 2-2024 but suggested amendments regarding Short Term Rentals for the Commissioners to consider before taking a vote.

Elizabeth Watson had signed the testimony log but had to leave the meeting before the chance to do so, and informed another audience member that she would be submitting a written comment/statement before the deadline for comments.

Each Commissioner offered closing remarks. No other comments were offered. On a motion by Commissioner Price and seconded by Commissioner Nickerson, the Commissioners unanimously agreed to close the public hearing at 11:27 a.m. and stated for the record, that the written comment period will remain open until the close of business on March 1, 2024. The legislative bill is scheduled to be considered for a vote on Tuesday, March 5, 2024.

Respectfully submitted,

Sondra M. Blackiston
Clerk/ KATE Manager

Approved:

Ronald H. Fithian, President
The County Commissioners
of Kent County, Maryland