

**IN THE MATTER OF
COUNTY ORDINANCE 11-03
RESPECTING THE PROPOSED
REZONING OF TAX MAP 60,
PARCEL 18 FROM AG TO
LIHS CONTAINING 216 AC. +/-**

*** BEFORE THE
* COUNTY COMMISSIONERS OF
* QUEEN ANNE’S COUNTY**

FINDINGS AND DECISION

A Petition was filed in accordance with Article XXIX of Chapter 18, County Code by Whalou Properties, LLC (“Whalou”) owner of property located north of US Route 50 and west of Maryland Route 213 containing approximately 216 acres, identified as Tax Map 60, Parcel 18 (“Property”). As provided in Section 18:1-216 and 218, Petitioner has requested as part of the Comprehensive Rezoning process that the Property be rezoned from Agricultural (AG) to Light Industrial Highway Service (LIHS).

The Planning Commission held a public hearing on the Petition (as well as many other Comprehensive Rezoning requests) on February 10, 2011 and made an unfavorable recommendation in its March 10, 2011 report to the County Commissioners stating only that the Petition was “inconsistent with the Land Use Map” with “suggestion for further study.” The County Commissioners held a hearing on May 24, 2011 and as part of the decision making process evaluated the Planning Commission recommendations and record of its proceedings; the Queen Anne’s County 2010 Comprehensive Plan; the Wye Mills Area Community Plan Draft; the proposed amendment, Chapter 18 of the County Code; Article 66B Annotated Code of Maryland, Land Use; and, the testimony and written record from our May 24, 2011 hearing.

The Property is located at the intersection of Maryland Route 213 and US Route 50, with approximately 2,000 foot of frontage being on US Route 50. This is one of the most highly traveled intersections in Queen Anne’s County. The Property is also just north of Chesapeake College (the community college serving all of Talbot, Kent, Queen Anne’s and Caroline Counties). There are also many properties in close proximity zoned and used for commercial or industrial purposes, including: the Friel canneries and food processing facility (one of the largest employers in County); 84 Lumber building supply retailer and wholesaler; a sand and gravel extraction and processing operation; a convenience store and gas station; auto dealer and repairs; and a storage facility; transient labor housing facility; and, a masonry and concrete block supplier and retailer. Furthermore, immediately east of the Property along MD Route 213 there are several service businesses. The Property is bordered on the west by a subdivision known as “Scottown.” The State Highway Administration (SHA) has purchased land abutting the Property to the

south for the construction of an overpass at Maryland 213 and US Route 50 intersection, which will thereby remove the existing traffic signal.

The area near and around Chesapeake College has been the subject of much discussion by the public and County officials over the past decade. The County's 2002 Comprehensive Plan, Land Use Policy 7A directed the County " earmark and reserve high quality employment land with highway and infrastructure access for future employment uses" and specifically recommending that the County:

Undertake a study of the potential economic development spin-off and technology transfer from Chesapeake College. Based on the results of the study, consider the appropriate designation for the area (Growth Area, Priority Funding Area, Special Economic Development District, etc.) to facilitate its eligibility for grants and special funding.

The County then undertook the preparation of a Wye Mills Area Community Plan,¹ ("Wye Mills Plan"), which was a significantly detailed study of the area. The Wye Mills Plan identified the Property for "Ecological Business Park" noting that the "US 50/MD 213 intersection is an attractive site for concentration of economic development activity." (page 4-7) The primary uses for the Property as noted in the Wye Mills Plan would be office, light manufacturing, research, and health care related facilities. (page 4-8) At that same time the University of Maryland, Biotechnology Institute (UMBI) in an attempt to locate its Center for Agricultural and Environmental Biotechnology was pursuing locating on the Property, which ultimately did not materialize. The Wye Mills Plan draft went to public hearing, but was not approved by the Planning Commission, thus never was before the County Commissioners for adoption.

As part of the 2010 Comprehensive Plan process, the Petitioner (along with other property owners in the Wye Mills area) requested their properties be identified as a "Growth Area" or for rural business development around Wye Mills. The County, however, adopted the 2010 Comprehensive Plan, without any particular reference to the Wye Mills area.

Through the comprehensive rezoning process, the Petitioner has requested the LIHS zone be applied to its Property. The LIHS (Light Industrial Highway Service) is intended to provide:

light industrial, highway service, office and regional commercial uses at key intersection along the U.S. Route 301 corridor from U.S. Route 301/50 split north to Kent County. The LIHS District is limited to those principal intersections that are planned to be upgraded or can provide safe access/egress to sites along the Route 301 corridor that have

¹ The most recent draft of the Wye Mills Plan is dated June 3, 2009.

intermodal transportation access. Extensive landscaping and screening is required within the LIHS District in order to mitigate off-site impacts on less intensive uses. County Code, Section 18:1-24.A.

Currently the County has LIHS zoning on properties at the intersection of Routes 301 and Maryland 213, just a few miles north of the subject Property. The land presently zoned LIHS is not in a Growth Area, nor is it serviced by, or in the planning area for public utilities such as sewer and water. The LIHS district is one of several zones in the County which are located primarily outside of Growth Areas and allow business development. Other such districts include the Suburban Industrial (SI) district and the Suburban Commercial (SC) district all of which are primarily located outside of Growth Areas.

With that background, and based on the evidence presented and testimony received, the County Commissioners do hereby make the following findings:

1. The Queen Anne's County 2010 Comprehensive Plan, ("Comprehensive Plan") Section 6, Economic Development & Tourism Element, has numerous goals, principles, policies and strategies to "create a balance between the need of job creation and expansion of the tax base to support County residents and the responsibility for protecting the natural environment." Section 6.2.2. specifically calls for the "increase in property tax base by increasing the number of commercial properties" and Section 6.4.2 proposes the County provide "sufficient land and incentives to grow economic opportunities that balance the County's tax base including: tourism, business and employment center expansion...support Chesapeake College educational programs, facilities and infrastructure. New business parks focused on providing jobs for industries including technology, research and development, agriculture and maritime." We believe that approving the rezoning request is consistent with and can help achieve these stated goals, policies and strategies (as well as numerous other such goals and policies not specifically referenced herein) of the Comprehensive Plan.

2. As best we understand it, the Planning Commission did not make a favorable recommendation for the rezoning from AG to LIHS, because the area was not designated a Growth Area in the Comprehensive Plan and the rezoning would be inconsistent with the land use map. The LIHS (and other similar districts), however, is currently applied to properties in the County that are not in Growth Areas (some of which are not identified for rural business development on the land use maps contained in the Comprehensive Plan) but where rural business development and LIHS, SC or SI zoning exists nonetheless. Applying the LIHS to the subject Property is consistent with those practices. We do not believe the Comprehensive Plan prohibits the rezoning of this Property given the current concentration of institutional, industrial, and commercial zoning and uses in the area.

3. The LIHS district, like the SC and SI districts is applied throughout the County principally in areas not designated as Growth Areas, and without planned public sewer and water. For example, the Kingstown area located in the northern section of the County contains many acres (both improved and vacant) of land zoned SC, some identified as such on the land use map and some not. The Kingstown area is also not a Growth Area, but provides services to the region and potential for further expansion of business development. The Wye Mills area, from the Property and Chesapeake College west to U.S. Route 50's intersection with Route 404 east is an area primarily comprised of SI and SC zoning and a hybrid of many commercial, institutional and industrial uses as noted previously. It is not inconsistent with the Comprehensive Plan to zone the Property so as to allow business development similar to those adjacent and nearby properties. We find approving the LIHS zone on the property is consistent with the development patterns and land uses in the area, and that the LIHS zone has development density and intensity similar to other zones adjacent to, or near the Property.

4. The Petitioner undertook an evaluation of waste water treatment and disposal capabilities for the Property, "Preliminary Soil-Hydrogeologic Investigation, Feasibility for Wastewater Treatment and Disposal" for property immediately east of the subject Property. The results show wastewater treatment capacity exists to serve the subject Property as well as others in the area without discharging into the Wye River.² We believe that it is likely the development of the Property under the LIHS zone can accommodate its own wastewater needs without the need to interfere in any way with the existing utilities at Chesapeake College, and can potentially accommodate wastewater from existing development in the area that currently discharges into the Wye River.

5. It has long been a priority of the County and State that an overpass be constructed at the US Route 50 Maryland Route 213 intersection. (Comprehensive Plan Section 8.17, page 8-25, map T.3) The SHA has been in the land acquisition and preliminary design phases for years, but (to the best of our knowledge) has yet to complete design and program construction. We believe business development at the Property will materially enhance the likelihood for the overpass construction by presenting the County and the State with an opportunity to partner with the Property owner to contribute in the construction or funding necessary to make the interchange at US 50 and Maryland Route 213 a reality. Any substantial highway improvements at the intersection of US Route 50 and Maryland Route 213 would be "short sighted" if it failed to take into account the long term business growth of the area generally, and this abutting Property specifically. For these reasons we believe the LIHS zoning of the Property (and its ultimate development) will not exacerbate the existing traffic challenges in the area, but in fact, will play a significant role in addressing those problems.

6. The Queen Anne's County Economic Development Commission (EDC) supports the requested rezoning because in its view it: is consistent with

² A copy of the report is part of the public hearing record.

Section 6 of the Comprehensive Plan; provides the opportunity for a “campus style” rural business development at a highly visible and traveled part of the County; is immediately adjacent to Chesapeake College; can properly address its wastewater needs and potentially provide wastewater treatment for nearby properties that are discharging into the Wye River; and is served by broadband internet infrastructure.

7. While the Wye Mill Plan was not approved by the Planning Commission (thus, the County Commissioners never had the opportunity to adopt or reject said plan), the years of extensive study and recommendations help guide us by clearly identifying both a market need and economic development opportunities in the Wye Mills area. Zoning the Property LIHS will help address that need.

8. The rezoning of the Property to LIHS is consistent with the intent of Article 66B Annotated Code of Maryland, Land Use, specifically with Section 4.03. “Regulations-Adoption; Purpose” which essentially states that regulations adopted by a local legislative body shall be:

(a)(1) In accordance with the Plan.

Response: See Findings 1 and 2 above.

(a)(2) With reasonable consideration for, among other things, the character of the district and its suitability for particular uses:

Response: While the County Code identifies the LIHS district to be located along intersections on Route 301, we believe that the US Route 50 and Maryland Route 213 possess all of the characteristics of intersections along Maryland Route 301, particularly in that there are planned upgrades at this intersection, and zoning the Property LIHS meets the intent of the district. We also believe that uses allowed in the LIHS are suitable, consistent and complimentary with those in the area, as identified above.

(a)(3) With view to conserving the value of building and encouraging orderly development and the most appropriate use of land.

Response: For the reasons discussed in Findings 3-5 above, the zoning of the Property to LIHS will conserve and enhance building values in the area by furthering both private and public investment in regional infrastructure. Furthermore, given the land use patterns in the area and the capability of the Property to address infrastructure issues, the LIHS zoning encourages orderly development and is an appropriate use of the Property.

(b) The regulations are designed to:

(b)(1) Control congestion in streets;

Response: See Finding 5.

(b)(2) Secure Public Safety;

Response: See Finding 5.

(b)(3) Promote the health, safety and general welfare;

Response: For the reasons noted by the EDC and discussed in Finding 6 zoning the Property LIHS will promote the health, safety and general welfare of the County in that it will stimulate economic growth, help create jobs, contribute to needed highway improvements, enhance technology growth around Chesapeake College and increase the County nonresidential tax base.

(b)(4) Provide adequate light and air;

Response: Regulations regarding design, environmental controls and other provisions which concern providing “adequate light and air” remain unchanged by rezoning of the Property.

(b)(5) Promote the conservation of natural resources;

Response: The Property is farmed in its entirety and is not located within the Chesapeake Bay Critical Area. There are no woodlands, wetlands or other natural resources located on the Property. All natural resource protection regulation applicable in the County such as stormwater management, natural resource protection, forest conservation, landscaping and buffering, mandatory open space, architecture and environmental design remain unchanged by rezoning and shall apply to the Property.

(b)(6) Prevent environmental pollution and prevent undue concentration of pollution;

Response: See Response to (b)(5) and Finding 3.

(b)(7) Facilitate the adequate provisions for transportation, water, sewerage, schools, recreation, parks, and other public requirements.

Response: See Findings 3-5. Local laws concerning adequacy of public facilities including transportation, sewer, water, school, parks, emergency services and other facilities will remain unchanged by the rezoning and will apply to development of the Property. Furthermore we believe that creating the opportunities for economic development as described in detail herein will generate greater tax revenue to help the County fund public facilities such as schools, for which eventual development of the Property has little or no burden.

For the reasons stated herein, the County Commissioner hereby approve the Comprehensive Rezoning request No. 20 WHALOU PROPERTIES, LLC TAX MAP 60, PARCEL 18, 216 ACRES FROM AGRICULTURAL TO LIGHT INDUSTRIAL HIGHWAY SERVICE.

ATTEST:

THE COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY



Steven J. Arentz, President

opposed

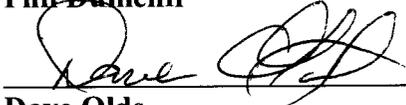
David L. Dunmyer

opposed

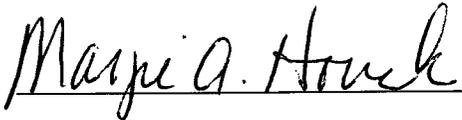
Bob Simmons



Phil Dumenil



Dave Olds



Date: 11/8/11, 2011