

**IN THE MATTER OF THE  
APPLICATION OF MICHAEL D.  
FOSTER AND VIRGINIA LYNN  
FOSTER FOR THE REZONING  
OF TAX MAP 67, PARCEL 7,  
FROM AGRICULTURE (AG)  
TO SUBURBAN COMMERCIAL  
(SC) AND SUBURBAN ESTATE  
(SE) 173.64 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 of the Code of Public Local Laws of Queen Anne’s County (“Code”) by Michael D. Foster and Virginia Lynn Foster (“Foster”) owners of property located at 420 College Drive, Wye Mills, Maryland containing approximately 173.64 acres of land and identified as Parcel 7 on Tax Map 67 (“Property”). As provided in Section 18:1-216 and 218 of the Code, Foster has requested as part of the Comprehensive Rezoning process that the Property be rezoned from Agricultural (AG) to Suburban Commercial (SC) and Suburban Estate (SE).**

**The Planning Commission held a public hearing on the request (as well as on many other Comprehensive Rezoning requests) on February 10, 2011 and make an unfavorable recommendation in its March 10, 2011 report to the County Commissioners stating that the Petition was “inconsistent with the Land Use Map” with a “suggestion for further study”. The County Commissioners conducted a hearing on May 24, 2011 and as part of its decision making process have considered and 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 Code, Article 66B of the Annotated Code of Maryland and the testimony and written record of the May 24, 2011 hearing.**

**The Property is located at the intersection of U.S. Route 50 and College Drive and has road frontage on both roads. It is immediately east of the Chesapeake College campus which serves all of Talbot, Kent, Queen Anne’s and Caroline Counties. There are a number of properties in close proximity which are 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; a storage facility; transient labor housing facility; and a masonry and concrete block supplier and retailer. Furthermore, immediately north of the Property along MD Route 213 there are several services businesses.**

The State Highway Administration has purchased property at the intersection for construction of an overpass at the Maryland Rt. 213 and US Route 301 intersection, which will remove the existing traffic signal.

The Agricultural lands east of College Drive are currently zoned Suburban Estate (SE) rather than Agricultural. SE zoning permits non-profit institutional uses by right and the rezoning would, among other things, allow the expansion of the Chesapeake College campus or other non-profit institutional uses which might complement the college activities.

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 stating the County:

Undertake a study of the potential economic development sign-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 preparing the Wye Mills Area Community Plan, ("Wye Mills Plan"), which was a significantly detailed study of the area. The Wye Mills Plan noted that the "US 50/MD 213 intersection is an attractive site for concentration of economic development activity." (page 4-7) 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.

The Petitioner has requested that 31.9 acres, more or less of their property be rezoned to Suburban Commercial (SC) and that the remaining 142.3 acres, more or less be designated Suburban Estate (SE). The Suburban Commercial District "is intended to provide primarily for a variety of commercial uses and limited light industrial uses in predominately rural or suburban areas not served by public sewer." (Code §18:1-21). The portion of Petitioner's property sought to be designated as SC adjoins other SC zoned lands and existing commercial uses at the intersection of Route 213 and US Route 50 and fronts on both US Route 50 and College Drive. The currently zoned SC property 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 SC zone is similar to the Light Industrial Services (LIHS) District and the Suburban Industrial (SI) District in that these zoning districts are located primarily outside of Growth Areas and allow business development in areas when public water and/or sewer is not available.

The Suburban Estate (SE) District “is intended to provide for low-density, large-lot residential uses or single family cluster development with significant associated open space. The SE District is characterized by spacious residential neighborhoods of an estate-type character” (Code §18:1-17). It also permits non-profit and for-profit institutional uses. The proposal SE zoning would be compatible with the other agriculturally used land in the vicinity and the institutional uses allowed in SE districts would be compatible with the neighboring Chesapeake College campus.

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 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 SC designation (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 SC and SE zoning designations 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. The SE zoning request is entirely consistent and compatible with the other agricultural land surrounding the Property.

3. The SC district, like the LIHS 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 SC zone on the property is consistent with the development patterns and land uses in the area, and that the SC zoned area as well as the SE zoned portion of the Property will have development density and intensity similar to other zones adjacent to, or near those areas.

4. The Petitioners' engineer (McCrone, Inc.) has represented that the property "has adequate soils capacity to accommodate...development permitted thereon should it be developed. Environmental Site Design (ESD) techniques for residential uses and institutional uses are particularly well suited for the reduction of agricultural nutrients into the Mill Pond and the vegetation stabilization of large portions of the pond's contributing drainage from the subject site" (See letter to the Planning Commission dated March 29, 2010 from Michael C. Whitehill, Corporate Vice President, McCrone, Inc.) We believe that it is likely the development of the Property under the proposed zone can accommodate its own wastewater needs without the need to interfere in any way with the existing utilities at Chesapeake College, and that development of the Property under current regulations may in fact improve the environmental impact from the Property.

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 or institutional 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 SC and SE 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. 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 there is a market need and economic development opportunities in the Wye Mills area, and that zoning the Property as requested will help address that need.

7. We further find that the rezoning of the Property as requested is consistent with the intend of Article 66B of the Annotated Code of Maryland, specifically Section 4.03, as follows:

*(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: We believe that uses allowed in the SC and SE 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 rezoning of the Property 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 proposed 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:** The proposed zoning 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 primarily farm land and is not located within the Chesapeake Bay Critical Area. All natural resource protection regulations 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 this 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 impact fees and 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 and other public requirements.

**FOR THE REASONS SET FORTH HEREIN, the County Commissioners hereby approve Comprehensive Rezoning Request No. 21, TAX MAP 67, Parcel 7, 173.64 Acres +/-, from Agricultural (AG) to Suburban Commercial (SC) and Suburban Estate (SE) as detailed in the Petition.**

ATTEST:

THE COUNTY COMMISSIONERS OF  
QUEEN ANNE'S COUNTY

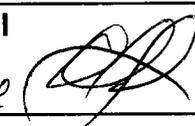
  
\_\_\_\_\_  
Steven J. Arentz, President

*opposed*  
\_\_\_\_\_  
David L. Dunmyer

Marjia A. Houb

*opposed*  
\_\_\_\_\_  
Bob Simmons

*Phil Dumenil*  
\_\_\_\_\_  
Phil Dumenil

*Dave*   
\_\_\_\_\_  
Dave Olds