


Policy Opinion Memorandum

TO: Honorable Citizens of Mount Airy
Honorable Elected Officials of Mount Airy

FROM: Council Member Stephen L. Domotor 

SUBJECT: Ordinance 2021-16, Changes to APFO to Relax Open Space Standards for MXD Development; and Ordinance 2021-17, to Rezone the Beck Property to MXD

DATE: October 4, 2021

I do not believe that the subject Ordinances are in the best interests of the citizens of Mount Airy, and therefore do not support their passage at this time. My reasons center on the choice of process used in crafting these ordinances, and on the collective approach taken in crafting them rather than an issue with any particular individual involved in the process. The basis for my opinion on these Ordinances is provided below.

Why It Matters

The process we choose to rezone the Beck Property, or making decisions on any Town issue, matters. In arriving at a decision that will impact the citizens and Town of Mount Airy, “how we get there” matters.

I’ve often talked about “Organizational Culture” in Town meetings, interviews, and Forums. Organizational culture is defined as the shared beliefs about what is right and how things are done in an organization. It is the collection of values, principles, expectations, practices, and processes that guide and inform the actions of everyone in the organization. It starts at the top of an organization, and is espoused by its senior leaders and communicated throughout all levels of the organization. **In summary, it is “how things are done around here” for that organization.**

In the case of the Beck property rezoning, we are presented with two choices: The first choice is to follow the Town’s standardized, established process of updating the Mount Airy Comprehensive Master Plan. This is a publicly-accessible process, widely-advertised through the Town’s Web Site, that holistically examines property zoning and rezoning requests for the future land use of Mount Airy (see Attachment 1). The Town’s advertisement to the public on this has been wide, and states that the “Town Survey results will be used as a framework to build Mount Airy’s future!” On this point it is noteworthy that Town Survey results highlight the public’s strongly held views on limiting residential growth, and their strong preference for nature trails and undeveloped natural open space. It also shares that the public is invited to attend Master Plan Workshop Sessions the first Thursday of every month. Clearly, the process is well described, well communicated, and open to stakeholder involvement.

The second choice, and the one used as the basis for the two Ordinances which are the subject of this Policy Opinion Memorandum, avoids the Town’s standardized Master Plan revision process through a work-around whereby the rezoning request could be tied to vague language in the 2013 Master Plan. This process is controversial and questionable by definition; and was not transparent but rather arrived at “in the shadows” through several meetings not open to the public

that included land developers, Town staff, and Town elected officials. As such, this process may be vulnerable to challenge.

Referencing back to organizational culture and what it means for our Town government as an organization, as a Town government and a Town Council, which of these two choices defines “how we do things around here?” I choose to be associated with the first choice, and strongly believe that we should follow the 2023 Master Plan revision process that we told our citizens we would be applying in determining the future land uses that will shape the future direction of Mount Airy.

Background Material for Reference

- Beginning in February 2021, the Town of Mount Airy initiated their once-every-ten-year process of updating the Mount Airy Comprehensive Master Plan. The Town announced that they had initiated the Master Plan update to create the 2023 Master Plan (attachment 1). In its announcement, the Town emphasized that citizen input from the 2020 Community Survey would be used “as the framework to build Mount Airy’s future.” It also directed that if property owners would like their property considered for rezoning, they should submit this request in writing via e-mail to Town government. This would serve as the Town’s standardized, established process for updating the Town’s Master Plan through a publicly-accessible, transparent process that holistically examines property zoning and rezoning for the future land use of Mount Airy. The current version of the Mount Airy Comprehensive Master Plan is dated 2013.
- Town Council adopted, and the Mayor signed into law, Ordinance 2020-1 on our about August 3, 2020, adopting and creating the mixed used development (MXD) zone. This was seven years after the 2013 Master Plan. At the time the 2013 Master Plan was released, a mixed-use land criterion was not in existence.
- At the June 7, 2021 Town Council meeting, two ordinances directed at the rezoning of the Beck Property within Mount Airy were introduced for consideration and forwarding to the Mount Airy Planning Commission, for recommendation back to the Town Council where the Council would then subsequently vote on their approval or disapproval. These Ordinances are: (1) *Ordinance 2021-16, An Ordinance to Amend Part 1 of the Code of the Town of Mount Airy Entitled “Administrative Legislation,” Chapter 25 Entitled “Planning Commission,” Article II Entitled “Adequate Public Facilities,” Section 25-5 Entitled “Adequate Facilities.”* And: (2) *Ordinance 2021-17, An Ordinance to Revise and Amend the Zoning Map of the Town of Mount Airy Consistent with the 2013 Master Plan.*
- It is noteworthy that these ordinances were introduced on June 7th, well into the Town’s 2023 Master Plan revision process, which began in February 2021.
- Several meetings were held involving the land developers and representatives who were working in association with the Becks, and Town of Mount Airy staff and elected officials. The meetings centered on rezoning of the Beck property. Detailed meeting notes were taken, documenting the discussions and actions at these meetings. They describe meetings held on February 26, 2021 and May 14, 2021. Again note that these meetings were held after the Town’s formal 2023 Master Plan revision process had begun. A Town staff member who was in attendance at these meetings provided these meeting notes to me voluntarily, which is an appropriate practice. I also spoke with the Town attorney and he indicated to me that the use of these meeting notes as part of my policy opinion thought process and this subsequent

memorandum was acceptable, and that the meeting notes are public-access documents acceptable and available for public distribution.

- What resulted from these meetings was an approach arrived at, seemingly based on the initiatives and suggestions from Town staff and elected officials, that favored avoiding the Town's standardized Master Plan revision process (which - evident from the meeting notes was deemed to take too long), and instead opted for an alternative work-around whereby this rezoning request could be tied to language in the 2013 Master Plan, thus allowing the rezoning of the Beck property outside the standardized scope of the 2023 Master Plan revision process.
- Also, what resulted from these meetings was the crafting of Ordinances 2021-16 and 2021-17 noted above, which were introduced at the June 7, 2021 Town Council meeting. Both of these ordinances seem to be precedent-setting, in that: (1) the first essentially waives or reduces open space requirements of our APFO, reducing the amount of open space required for ANY future mixed use development; and (2) the second rezones the Beck property – not through the standardized, normal process for rezoning but rather through a legislative process. This is the first time to my knowledge this has been done by a Town Council and sets a precedent for similar approaches to rezoning of property in the future.

Areas for Your Consideration, and that Informed the Basis for My Policy Opinion

- It seems to me that as a matter of practice rezoning officials should make every conceivable effort to protect the integrity of the zoning and land use planning process through transparent, objective and impartial decision-making. It also seems to me that Town staff and elected officials' first allegiance should be to the citizens of Mount Airy and their wishes for the future direction of the Town. Finally, it seems to me that the role of our Town staff and elected officials in such meetings is to provide an overview of the Town's protocols and requirements that must be met for rezoning of a property. It in turn is the land owner and developer's job to propose approaches and solutions to achieve compliance with rezoning requirements for that property. It seems that on several of these points, there may be an appearance that the opposite occurred.
- Some may say that this is simply part of the "sausage making" when discussing land rezoning. It seems that there may also be an apparent appearance of lack of impartiality, objectivity, and transparency; deal making; and prejudging in this process.
- Some areas for your consideration:
 - Town staff offering up a "controversial" (i.e., as reported in meeting notes, their own words in describing this work-around; and questionable by definition) approach to be pursued as an alternative work-around to following the standardized Master Plan revision process.
 - Statements made that if the developer could get the rezoning quickly, this would give the Town what they might want more quickly, with Center Street seemingly used as leverage to get the rezoning desired from the Town.
 - Elected officials seemingly offering rezoning of the property to the developer, and to have the rezoning moving ahead in 90 days or by the end of summer.

- Discussions of APFO hurdles or roadblocks that would be an issue to moving forward; and with the acknowledgment that the Town is currently in a deficit of 80 acres of open space, nevertheless offering potential approaches for seeking waivers of open space requirements that would support the rezoning and development of the property to move forward.
- Possible appearance of impartiality or transparency issues associated with elected officials being involved in crafting and endorsing rezoning-related Ordinances 2021-16 and 2021-17, then being the ones who “formally introduced and seconded” these ordinances at a Town Council Meeting, and who will now also be voting on them at the Town Council meeting scheduled for October 4, 2021.
- These were Town official business meetings, but were not held in an open public setting. Should they have been? These meetings were impactful and included conversations about crafting precedent-setting legislation that dealt with rezoning, and involved several elected officials (e.g., the Mayor and two Council Members). The meetings did not reach the full threshold needed for having to comply with Maryland’s Open Meetings Act, but clearly the meetings were in the public’s interest. Maryland State guidance says that when in doubt, you should hold your meeting in a public setting (Maryland Open Meetings Act Manual, January 2021). If a reasonable person (i.e., a Town citizen) were to observe and listen to the conversations, approaches taken, and decisions made at these meetings, would they question their impartiality, objectivity, or transparency? Your review of the meeting notes may help to inform your own view in this regard.

Some Ethics Requirements, Guidance, and Practices for Your Consideration

As a final point for consideration and thought, here are some key points regarding ethics and the importance of ethics in municipal government.

From: Maryland Municipal League – MML, Course on Ethics given to Maryland Public Officials, July 2021:

- Municipal staff and elected officials should avoid improper influence and the appearance of improper influence.
- Actions taken should assure citizens of the impartiality and independent judgment of officials and employees.
- The relationship between ethics and the law: Lawful conduct can nonetheless create a perception of unethical behavior.
- In addition to ethics laws, if something doesn’t feel right or sound right to you, then it is likely unethical from your perspective.

From: Town of Mount Airy Charter and Code:

- C12-1 Oath of Office: Town employees and elected officials swear “without partiality or prejudice, to execute their position/Office according to the Constitution and laws of this State and the laws of the Town of Mount Airy.”

JOIN THE ZOOM WEBINARS THE 1ST THURSDAY OF EVERY MONTH AT 6:00 PM

The 2023 Master Plan is Underway!

And YOUR input from the Town Survey will be used to create it!

If you would like your property considered for rezoning, email 2023masterplan@mountairymd.gov

TOWN OF MOUNT AIRY, MARYLAND

The opportunity for all of the town's stakeholders to collaborate on a unified vision for the future of the town is as important and valuable as the changes prescribed by the Comprehensive Master Plan itself.

Town staff are working on the new Town of Mount Airy Master Plan -2023 using the Growth Development Task Force distributed last year.

Town Survey Results will be used as a framework to build Mount Airy's future!

Thank you for the tremendous response we received from the survey!

[Click to View the 2013 Master Plan](#)



John Breeding, Director of Planning, will be inviting commission members to each Masterplan Workshop Session the 1st Thursday of every month at 6:00 PM. Currently all meetings are virtual.

The public is invited to attend in listen-only mode. Meetings will also be live on the [Town's Facebook page](#).

Commission members only may comment at the meetings.

If you are interested in joining a commission, please [email Mayor Patrick Rockinberg](#).

To see the current list of vacancies, visit the [Commission Vacancies webpage](#).

Related 2023 Masterplan Workshop Documents

- [2023 Draft Comp. MP Implementation Martix](#)
- [Feb 4, 2021 work session Agenda](#)

Calendar

Thu Jun. 3

[2023 Master Plan Work Session](#)

Thu Jul. 1

[2023 Master Plan Work Session](#)

Thu Aug. 5

MEETING NOTESCENTER STREET PURCHASE ON FEBRUARY 26, 2021

Present: Barney Quinn, John Breeding, David Warrington, Tom McCarron, Victor and Craig Kazanjian (Kaz Brothers) and David Bowersox (Esq.)

Victor - stated that we are aware that the Council has established that Developer Responsibilities and Rights Agreement legislation has been proposed and that is a good thing.

Tom – Yes, should be adopted. We would have in February, but CM Munder could not be there and he had a change and it was delayed.

David B. – Does your draft include a provisions for multiple jurisdictions? I think I heard you have to have an analysis with SHA or the County then?

Tom – I would have to look back. State Code dictates not permits, but I can take a look.

Victor – With the MXD and DRRA done, both of those are in a form that we find workable. It is now in a great form. I am happy where the legislators are and they are believing in this process. This allows us to have a partnership. We can address individual and logistical things that come up. The best thing is the Zoning. The last time we all got together that's what we were discussing. **The question now is whether there can be a text amendment or if we have to wait for the Comprehensive Master Plan?**

John– We are currently accepting applications for zoning requests for the upcoming Master Plan. We are hoping to adopt it in 2023. I have received 3 requests so far.

Victor – **Has there been any further discussion regarding the text amendment?**

Tom – Comprehensive Zoning is a legislative matter. The question is which one would apply? The previous Master Plan that we are currently under clearly talked about this area being zoned MXD. It's just that the zone didn't exist at the time.

John – **we found the page and it seemed clear. (Page 87 of the 2013 Master Plan)**

Tom – **We have to re-look at this. Could we just re-zone as consistent with the current Master Plan? Well, that may be controversial, but that opportunity is there to use that.** We have to be consistent with re-zoning as well. Will it be consistent and part of the Comprehensive re-zoning? **Yes, then we won't have to wait for the 2023 Comprehensive Master Plan. If no, then we have to figure out a lot of what we have to do here.**

David B. – There was, it seems, some implied language.

Tom – Could do a Master Plan Amendment as well. So you don't have to wait until 2023.

David B – A Master Plan is not the only means to get the zoning.

Barney – Going with a larger water line that we are currently working on down the center of Center Street from a 6 inch to a 12 inch will provide much better hydraulics.

Victor – we are working on a draft plan and that will work for us. There is also the business of eminent domain.

David W addressed, no notes taken.

Victor – There has been quite a bit of discussion about funding to have the Becks separate Center Street from the project. Some people say they want to hold off the project, but we want the street. You all want your cake and eat it too. This is a waste of time. For example if we have to wait for the Master Plan a Town, by the way while you are waiting, we are going to TAKE it.

Tom- I will start. Eminent Domain is not the Town's interest in just "taking" the property. Grant opportunities were presented to the Town and the Town took advantage of the opportunity. CM Reed has been very busy in attempting to get a commitment to extending Center Street all the way through and has been a big supporter.

David W – We passed a Resolution that she drafted regarding that commitment on behalf of the Town Council.

Victor – Can I get a copy of that?

David W. – Absolutely, I will scan and email you a copy.

David B – **So, we need to get the DARR and the zoning taken care of, then we can look at selling the Town the street.**

Victor – We can think about appraisal and the Police Station property/location on Center Street. Maybe we also start looking at X number of dwellings toward design. Some round amount toward the density policy. Perhaps that is the way to go.

John – can we move forward as a joint venture? Why can't we just go forward with the change in ownership of the roadway? How far is your development plan?

Victor – there is a transportation plan. Maybe the Police Station site could be purchased with the Grant Funding? Is acquisition of the roadway set as 100% of the funding and not the roadway? If we get a shorter path to zoning then that may make a shorter path to everything else. This makes sense to me. Let's face it the roadway is our leverage to get what we want. We don't want to lose that leverage toward the Town. **We need a timeline for re-zoning and the DRRA. Right now retail sucks, but it is time to get plans ready so we are all ready 3 years from now to start. Our goal is to get the zoning now rather than wait for the Master Plan. Is it possible for us to act like it is zoned and do some of these activities like the DRRA? We can then work with what we know is acceptable in the MXD.**

All agreed to begin working on their end.

MEETING NOTES

CENTER STREET PURCHASE ON MAY 14, 2021

Present: Patrick Rockinberg, Pamela Reed, Barney Quinn, John Breeding, David Warrington, Tom McCarron, Victor and Craig Kazanjian (Kaz Brothers) and David Bowersox (Esq.)

Karl Munder

Pamela – I have an agenda. Tom do you want to start?

Tom – The question is are we going to rezone now or during the upcoming Master Plan process? David B and I will be working on the Developers Responsibilities and Response Agreement (DRRA).

Pamela – Beck property and Center Street are very important and I fully support. I want a list of what we need to do to move this forward. Will rezoning help you?

Victor – Yes! We are ready to go I we get this rezoned. It will help. We all need to be onboard. First, are we going to concentrate and submit commercial heavy on the East and heavy residential on the West. Are there any APFO's on the books that will put this on hold? Without something like that, hear we are moving forward.

Barney – Water and Sewer APFO we don't have the water, but we have the sewer.

Victor – we did a water study and we could probably send a hundred gallons and hour. We are comfortable with our water study.

Barney – All these things are up to MDE interpretation and they will look at aquafer draw and the will factor into our allocations from them.

Victor – I think our water was to stay out of the closest well.

Barney – MDE will pose these questions and will only give us a fraction of the amount as they see fit.

Pat – Is the Town's open space the same on commercial and residential?

Tom – Lots separate what is required for APFO. We currently are in deficit of 80 acres regarding open space, but the Planning Commission can give an exemption of they qualify. Commercial and add no residents then that may qualify. We did amend the APFO for Downtown properties, but that did not include MXD.

Pat – do Town's make exemptions in order to insure development? Can we waive?

Tom – you can change the APFO requirements to in essence provide an exemption. Legislation would have to change the Ordinance to do that for MXD. There are some ways to do this.

Pamela – Who starts the process to rezone?

Tom – We can jump start that. It is a loose-end from the current Master Plan.

Pamela – We will need an APFO Ordinance like the Downtown Zone then for MXD.

Mayor – there is a big Facebook firing from, I think, Simpson where Center Street and Main Street meet. Maybe a way to re-work just a by-pass around. It will increase pedestrian traffic. Some of the Town wants have a circuit in the survey as to development so not to have a Rockville.

David B. – the DRRA would be valuable in addressing some of the Mayor’s concerns. We could look at APFO with open space in the entire plan.

Pamela – Tom could you send us a copy of the Downtown Zone Ordinance so what will or will not work in this case?

Tom – I will do that.

Victor – Back to the Mayor’s point. Design on the west side will look like your consultants drawings. The open areas we will try to incorporate for public use. On the other side, the open space will be more of a green space due to the grading. I understand the requirements of water and sewer and open space. I am talking about the macro things to get the project off the ground. We want to avoid the things that just stops everything.

Barney – the open space is the key.

Mayor – I say we look at a waiver if needed.

Victor – at some point there were water allocations for this area.

Barney – Yes along Center Street there is close to 30,000 for “priority areas.”

Victor – I think there was sufficient water on the site. This will not be a Rockville type development. This will be use next to use not use mixed into use. Residential next to commercial not on top of commercial. Inter-mingled use.

Barney – Can you clarify that you aren’t planning on parking garages?

Victor – No, that product wouldn’t sell here and it is not our intention to do parking garages.

Barney – Yes, the support parking on the ground will limit the development.

Victor – you will see Center Street store fronts on both sides and parking will be behind them. Parking will be a limiting factor, so we will need the find spaces.

Pat – maybe we provide a waiver for parking.

Victor – East and West sides will have different feels. We want to avoid waivers, but they may be needed on a micro level.

Mayor – I want to forward the Facebook post with people calling for no-through Center Street.

Karl – I will be happy with the attempt to reduce the Rockville feel. We just spent a couple hundred thousand to upgrade Center Street at Main Street and I think it has to go through.

Mayor – maybe a pedestrian bridge or tunnel?

Karl – I will look at the whole project as it applies to the whole Town. Like Century Drive.

Victor – we looked at continuing Century Drive and it addresses the only failing intersection.

John – in this process, we can make the Century Drive connection as part of the Phase 1 west side development. It would then connect to 27.

Victor – my initial answer is yes because we want the west side and east side sewer connection. The complication is that you can't just put a road in with no revenue. We need the revenue to cover the infrastructure costs. It is a numbers issue that we would need to look at. Developmentally, I like it, but the costs are a factor.

John – the connection could be an asset to the Town.

Victor – I can sell every house or townhouse, but the retail will be slower. I don't know what the number is right now. If I ask for 300 units a year you will say no. I have not sat down with the developer for years, but Price-Product-Absorption rate are factors. We are going to begin meeting with them regarding these factors so we can be moving forward.

Karl – I could say 90 days or by the end of summer you will see the zoning moving. Outside of the Century we would like to see Center Street move forward. We would rather use our Bond Bill money rather than lose it.

Victor – it's a nice ask, but I want to hold some cards back. Opening Center Street is important. Not a hostage situation, but there is no compulsion to act quickly for development once the road is out of the project.

Mayor – Karl may be the Commissioner of Planning after the 17th.

Victor – How we connect it will take all of our input. Maybe the funding could apply to pedestrian improvements.

Karl – What do you consider hurdles, the APFO?

Victor – The Town has standards and the Town also has no ability/mechanism to address. I need things I can solve not like the 80 acres deficit.

Barney – we don't control schools which is one of these APFO items. Fire just got a ladder truck. Sewer we have and water you said you have. Roadways sound good with Century. So if you can get the open space then we should be okay as a Town. The Police element we may have to look at as to whether we need to add an Officer.

Victor – APFO has to be reviewed regarding the open space issue.

Barney – Should we have a request filled for rezoning in writing?

Tom – You should make this look less like a mid-term rezoning which needs a significant change in the neighborhood or a mistake. Need to make it appear like a Master Plan adjustment.

My gut feeling is to have the Town do it as tying-up loose ends. Now we are back-filling which less subject to a challenge.

David B – Page 87 as an implementation of the MXD is instituted by the Town since zoning and DRRA have been subsequently been put in place

John – the Town changing so we don't have to go through the full blown process?

Tom – a legislative public hearing as dictated by Code is needed. We will not need the evidentiary aspect of an applicant's request. It will remove controversy from the upcoming Master Plan process.

Victor – we will draft and submit the DRRA and we will customize this in a collaborative effort.

Tom – It will be a negotiated agreement. All the preliminary works will then make it easier to deal with the Center Street issue.

Pamela – Thank you all. I will be in touch.