

Open Work Session

Proposed Water and Sewer Plan Amendment – Aldi Grocery Store

April 17, 2018

Mr. Dallas Baker, Director of Public Works, came before Council. Mr. Baker said they received a request for a water and sewer plan amendment from the Aldi's Grocery Store. He said they have representatives present if there are any specific questions, but this is the property on the corner of Route 13 and Dagsboro Road. He said it is the northeast corner where the old Chevron used to be. He said the property has been annexed into the City, and they are currently at the W6 S6 designation, which means no water or sewer service plan. He said they are going to build a grocery store, and are planning on putting water and sewer there, so they would like to change that designation. Mr. Baker said Council has the packet in front of them, and it is pretty straightforward. He said, if everything is okay here, they will move this into Legislative Session for the Public Hearing, and then it gets forwarded up to the Maryland Department of Planning (MDP) and the Maryland Department of Environment (MDE). He said the State recently revised their process so that, before these packages come before Council, they go up to the State for preliminary review, and that way any questions they have on the State level get addressed before it comes to Council, and then gets sent back up. He said, therefore, MDE and MDP have both already reviewed this, and their comments have been addressed. Mr. Hall asked if it comes back for Council to address, and then it goes back to the State again, to which Mr. Baker responded, no. He clarified, it has already gone to the State, and they are good with the package. He said it then comes before Council. Mr. Hall asked, if Council does not like it, do they then send it back to the State, to which Mr. Baker responded, no. He said, if Council does not like it, they get whatever comments they want addressed, and then send it back to the State. He said the State was getting packages that were approved on the local level that they took issues with, and then they were getting bounced back, so they are just trying to get a preliminary review in to avoid the back and forth. He said the State received a lot of directive from the Governor's Office to speed the process up. He said he thinks they originally had a timeframe of 90 days, and he believes that was shortened to a 45-day approval, and, in order to meet that, they wanted to get a look at it before the formal submittal.

Mr. Joe Holloway asked if this should have all been done before construction started. He said he went by the site yesterday, they are excavating and pipes are going in the ground. He said it is kind of like they assumed this was going to happen anyway. He said it probably will, but he just wonders how starting the construction fell into the timeline without this being approved, to which Mr. Baker responded, he would equate this to where someone could go and get a grading permit prior to getting a building permit, and that way someone could go out and throw up their silt fence, start their clearing and grubbing, and their basic site work before they actually even get their building permit. He said it is how the permit process is set up, and revising that is beyond the scope of what they are looking at here. Mr. Joe Holloway said it makes him wonder why they would go to all of that expense before it is ever approved.

Mr. Larry Dodd said he will tag on to what Councilman Joe Holloway said. He then said he is just looking at the application, and the applicants signed it on December 12, 2017, and then it says "Authorized Government Official," and somebody from the City signed it on March 22nd. He then asked why it takes so long to get to Council, to which Mr. Baker responded, again, it had to go to the Maryland Department of Environment for their approval. He said the package went to them, the County got their okay, and then, during his own review of it, he noticed they had not gotten the City to actually formally sign the application yet, so he asked the City to sign that. He said it went to the State before the City signed it. Mr. Dodd said he understands that part, but, since it was already going there, was already signed, and

then was coming before Council, why could they not have gotten it ahead of time so they would have had more time to digest it and think about it. Mr. Baker said Mr. Dodd has all the time in the world to digest it, to which Mr. Dodd responded, he knows that, but it would have been the sooner the better if Council had gotten it back then, and that is all he is saying. Mr. Baker asked if Mr. Dodd would like the future applications at the same time the State gets their draft, to which Mr. Dodd responded, Councilman Joe Holloway said they already have dug the ground, and it would be nice to know what is going on. Mr. Baker said he does not have control over that. He said that has been annexed into the City, and he does not have control over what the City allows them to do on property that has been annexed. Mr. Dodd said he understands, but he is just saying the application was signed, and the County had possession of it. Mr. Cannon asked Mr. Baker how the City could do an annexation before the County has amended the water and sewer plan, to which Mr. Baker responded, his understanding is they can annex a property into the City without having to do a water and sewer plan amendment. He said, if he is a property owner, he can petition for annexation and then leave it a blank field. He said he does not have to have water and sewer service serving a property as a requirement of annexation.

Mr. Davis asked, if this property is annexed into the City, why is the County getting involved, to which Mr. Baker responded, because the County controls the water and sewer plan. He said the water and sewer plan is part of the County's comprehensive plan, and the County has control over that. He clarified, in order to change that designation from W6 S6, which is no water or sewer service, they have to come to the County to get that designation changed saying they are going to change their comprehensive plan and the subset of that plan, which is the water and sewer plan, to say that property is going to be serviced with water and sewer. Mr. Cannon said it is merely a formality to change the water and sewer plan, but what he really does not understand is, if it is a governmental process they abide by, how can they possibly be putting shovels in the ground when the water and sewer plan amendment has not been approved by Council. He then said he does not see how they can go ahead and just begin that process. He then asked who authorizes that, to which Mr. Baker responded, they can go in and start shoveling dirt. Mr. Cannon said they have to have the authorization to do that, to which Mr. Baker responded, from the City. He then said here is the caveat; they can go and build that store, have it turnkey ready, and cannot have water and sewer service until the County has changed over their water and sewer plan. Mr. Matt Holloway said they can put the pipes in the ground, to which Mr. Baker confirmed, yes, they can put the pipes in the ground. Mr. Baker said he can go build a rocket, but they are not going to let him launch it unless he gets approval from NASSA. He said there are approval processes that hold that back, so, again, the property is in the City, and the City controls what they are allowed to do. He said the City was willing to grant them a permit to go in and start grading and building the site prior to getting the water and sewer plan amendment approved. He said the County does not have control over what they are allowed to do on that. Mr. Cannon asked if they should send a letter to the City saying, just as a matter of policy, from now on they would not recommend issuing a building permit to an annexed property until they have confirmed the water and sewer plan has been amended where necessary, to which Mr. Baker responded, that is certainly a possibility, and they can ask the City to do that. He said, historically, it is his understanding that it is run concurrently. Mr. Kilmer asked if that would be more red tape and draw out the process for them to get their building up. He asked if the County is trying to stand in their way, to which Mr. Cannon responded, no, this could have come before Council two to three months ago. He said, as Councilman Dodd said, they could have brought it before Council back in December, and it could have been done concurrently. Mr. Baker said, it is interesting with that process because MDE has specifically said they want to take a look at it first, so the County could potentially introduce this in draft in a Work Session like they are doing now at the same time that MDE is seeing it. He said the caveat is going to be, if Council says they are good with it during their Work Session, and MDE comes back and wants revisions, then there would be, he thinks, another Work

Session to go over the revisions that MDE has dictated to the County. He said they are trying to get multiple reviews done at the same time, and it is an iterative process.

Mr. Joe Holloway said he is familiar with this property and he knows it is on the other side of a lake. He said he guesses MDE is probably going to look at it as fairly fragile property, but he guesses what bothers him is just the assumption that everything would be done. He said there is no need to hold it up, but, when he rides by and sees the activity going on, and progress being made, and then it comes before Council to be approved, it kind of looks like they are putting the cart before the horse here. Mr. Davis said Council would look like the bad guys if they turned it down. Mr. Joe Holloway then asked, what would happen if Council said no? He said he does not see any reason to say no, but what he is saying is that it seems like there is an assumption that it is just going to be approved anyway, to which Mr. Baker responded, he understands. Mr. Cannon said this is not a power play or anything like that, but it is Council's responsibility, and that is why it is as it is in statute or code, but it is there because they expect Council to protect the citizens of Wicomico County by following the procedure. He then asked if this is a situation where the City moved too quickly, or is it one where the County neglected to propose the amendment to the water and sewer plan earlier, to which Mr. Baker responded, again, historically, they have done these concurrently, so he does not believe there has really been any change in whether the City started jumping the gun by letting them build things, or if the County did not get the paperwork in on time. He said they got the paperwork in, and they forwarded it to MDE for their draft review. He said that was the big change in this process. He said previous projects did not go to MDE for review, so that is why they are seeing this extra timeframe. He said he thinks probably on Aldi's side, in the hopes of trying to move forward when they have a targeted opening, they made the assumption of starting to do work, got their building permit, and got this all going because, historically, the County has not had issues with changing these amendments since the City has the water and sewer capacity to serve the property, and this is really just changing numbers on a planning map. Mr. Cannon said Mr. Baker is 100% correct, but, if this is what the process is going to be, they might as well follow it, to which Mr. Baker responded, yes, and they can certainly send something to the City to say please do not issue any grading permits, or any type of permitting for this until they have received formal approval back from Council for the water and sewer plan. He said, again, that is going to add another level of bureaucracy, to which Mr. Cannon responded, the level of bureaucracy is already there, and he thinks they just need to be careful on how they deal with it, and it is not going to extend the process that much. He said Mr. Baker could have brought this before Council two months ago, and it would have been approved in two weeks, to which Mr. Baker responded, Council could not have approved it until they received MDE's approval back. Mr. Cannon said anything Council does it not going to prolong it that much. Mr. Kilmer said Sharptown came before Council several months ago with their water and sewer plan, and they are still going through the process of getting that approved by MDE, and that has been six or seven months. He said it has been awhile, so he thinks it would be a pretty big delay if they did not let them run concurrently. He said Sharptown did try to get ahead of the process, and that is land where nothing is going to happen there anytime soon, so they were trying to get ahead of the timing, and it should not have been an issue, but they still have not gotten final approval from MDE, even after Council had their work session on it. He said he thinks there can be a lot of delay, not at the County level, but at the State level, and, if Council does not allow it to run concurrently, and says the City cannot do anything until the County does something, the County will be holding up a lot of work in these kind of more outlying situations. Mr. Cannon said the County's process is not holding up anything, to which Mr. Kilmer responded, the County is dependent upon what the State does. Mr. Cannon said, as the County, they are not dependent on the State, as this is on the table right now, and MDE still has not responded, to which Mr. Baker responded, that is not correct. He clarified, MDE has responded. He then said MDE looked this over, and has given their blessing. He said if Council approves this and he sends it to MDE, it is almost a rubberstamp

approval. Mr. Cannon said, when Mr. Baker said he had to send it to MDE, he thought that meant there was another process they have to go through, to which Mr. Baker responded, no. He said they have looked at the draft report, they are good with it, they had their comments addressed, and the County now sends this back to them with their approval, and then they just rubberstamp it. He said the issue MDE was experiencing was that they initially had 90 days to review all of these applications, and they were coming up before the State and the Departments of Environment and Planning, and the Governor said they were taking too long and holding up business. He said the Governor said they want to be business-friendly on the State level, so they sped it up and dropped it from a 90-day review process to a 45-day process so these businesses can get up and running faster. He said, in order to compensate with the lack of staff they had at the State level, they asked the Counties to please send these applications ahead of time before they have reviewed and approved them on the local level so that, if they have comments, they can get those addressed before they are formally introduced to them. He said, once the State gets the formal approval, their clock starts ticking. He said they have 45 days to get that out the door or they get in trouble, so this was their mechanism to that. He said the reality is that the County can still just keep doing things the way they are, and they can review these reports, approve them, and then send them to MDE without their prior approval, but he does not know what that backlash would be because the State has come to the County and said they are revising their process. He said the State might just outright reject the applications, and say the County has not followed what they were told to do, and tell them sorry, go back to the drawing board. Mr. Kilmer said he would suggest what Mr. Dodd mentioned, where, once they get the idea this may be coming, maybe Mr. Baker can email the application to the Councilmembers and say this might be happening, and if Council wants a Work Session on this, let him know. He said he does not think they necessarily need to have a Work Session, to which Mr. Dodd responded, that is what he was suggesting. Mr. Kilmer asked Mr. Baker to let Council know ahead of time so they have some idea about it, but they should not be saying they cannot do any work until Council is done. He said they need to run concurrently or they are going to hold up some work. Mr. Cannon said he was not suggesting that. He clarified, he was saying this is how the process should be because he would hate for there to be some type of ramification. Mr. Kilmer said he thinks the people should understand that Council always retains the power to say no, and that is a risk they run, but run it concurrently and keep Council informed better at the beginning of the process so, if there are objections, they can have a Work Session and stop that ahead of time. Mr. Baker said he is just thinking out loud, but maybe when they get the next application, when he sends it up to MDE for their review, he can forward that to Council also for their review with the question of whether they want a Work Session now, or after MDE has had a chance to review it with their comments.


Mr. Cannon said it seems the City is moving forward even without MDE's response. He then asked if that is correct, to which Mr. Baker responded, again, the City has issued what he would assume is basically a grading permit to start work on that site, and the business owners felt they would take the risk and start pushing some dirt and getting their grading and silt fences and such. He said one of the first things they have to do is build their stormwater ponds and their sediment erosion control before they can even start working on the building, so that can be going on while they are getting this approval. Mr. Cannon said it sounds like they moved well ahead of it with both the County and the State, to which Mr. Baker responded, realistically, to be fair, they might not have been aware that MDE was changing their plans up. He said this is the first plan they have had come through that has gone through the process of going to MDE as a draft review first. Mr. Cannon said they will leave it in Mr. Baker's hands. He said, again, he always looked at it as a formality. He said it is worthy of consideration, but, in the same sense, he thinks it is a formality. Mr. Baker said he will send Council the draft copies when they go up to MDE, and, if they want a Work Session on it, they will have one.

Mr. Dodd asked if the applicants were in the audience, to which Mr. Baker responded, yes. Mr. Dodd said he would like an introduction to say hello, and he does not want them to think Council is against this project because they certainly are not. Ms. Sherry Hostetler of Bohler Engineering came before Council. She said they are the engineering consultant for the Developer, Pentex Ventures. Mr. Ed Baker, the Developer with Pentex Ventures, also came before Council. Mr. Cannon said, as Mr. Dodd said, they are a pro-business group, and they were just concerned about the formal process of how this was done, and it is no reflection on anybody whatsoever. He said they were just curious as to how something came to their table for approval, and it seems the project is well out of the gate before they have even made that approval. He said this does not seem like the best way to go, but he guesses they understand what risks they take when they get into it, and also try to deal with as many delays as they can. He said they would not be the first project developer or manager to continue a project before they had complete approval from the State of Maryland. He said he thinks half of Lighthouse Sound was built before they had approval from the State of Maryland. Mr. Cannon said the floor is open for any comments they would like to make. Ms. Hostetler said she is just here to answer any questions Council may have. Mr. Ed Baker said he really appreciates the opportunity to work here, and with good fortune they will do some more things in the area. He said he will continue to invest money in this community and County. Mr. Cannon said the County goes to a lot of hard work to get people like Mr. Ed Baker in their County, so they appreciate it. Mr. Dodd thanked them for their understanding and for being at the meeting.

Mr. Cannon asked where they go from here, to which Mrs. Hurley responded, it requires a Public Hearing, as Mr. Baker mentioned, and they can have that on May 15. There was no further discussion.




John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Marc Kilmer, District 2



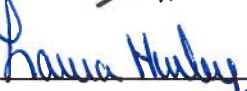
John B. Hall, District 4



Joe Holloway, District 5



Matt Holloway, At-Large



Laura Hurley, Council Administrator