

TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
July 13, 2016, 7 p.m.

OPEN SESSION TO VOTE TO ENTER CLOSED SESSION (6:30 p.m.)

The Town Council will meet in open session for the purpose of voting to enter a closed session pursuant to the Open Meetings Act, Maryland Code, General Provisions Article, Section 3-305(b)(8) to consult with legal counsel about pending litigation (ACT lawsuit); and pursuant to Section 3-305(b)(7) to consult with counsel to obtain legal advice on a legal matter regarding private improvements in the public right-of-way.

- I. GENERAL BUSINESS
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of June 8, 2016 Council Meeting & Executive Session
 - D. Approval of June 2016 Financial Report
 - E. [Town Manager's Report](#)
 - F. Public Comments

- II. COUNCIL DISCUSSIONS
 - A. [Special Committee on Purple Line Mitigation](#)
 - B. [Update on the Bethesda Downtown Plan](#)
 - C. [Status of Stormwater Management and Erosion and Sediment Control Ordinance](#)
 - D. [Request for Temporary Suspension of Permit Parking Restrictions \(MCBOE\)](#)

- III. PUBLIC HEARINGS & COUNCIL ACTIONS
 - A. [Public Hearing & Council Action on an Ordinance Granting a Non-Exclusive Cable Franchise to Starpower Communications, LLC](#)

- IV. ADJOURNMENT

MEMORANDUM

I-E

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Town Manager's Report
DATE: July 13, 2016

This report highlights many of the initiatives undertaken by Town staff over the past month. In the interest of brevity, I have not included ongoing staff functions. Please let me know if you have any questions or need additional information.

Council/Committee/Board Assistance:

- Coordinated volunteer recruitment for Town's standing committees.
- Contacted environmental consultants regarding water quality testing related to the Purple Line.
- Scheduled multiple meetings related to the Bethesda Sector Plan.
- Monitored Bethesda Sector Plan and Subdivision Staging Policy on behalf of the Town Council.
- Worked with Community Relations Committee, Climate and Environment Committee and Public Services Committee on special events.

Special Projects:

- Continued oversight of Washington Gas and WSSC infrastructure repairs.
- Implemented permit parking on the 4100 block of Aspen Street.
- Researched options for Town election management.
- Processed requests for traffic signs and street lights.
- Attended MML Conference.

MEMORANDUM

TO: Town Council

FROM: Cecily Baskir, Co-Chair, BDP Special Committee

DATE: July 8, 2016

RE: July 13 Town Council Meeting- Requested actions

Dear Mayor Fosler and Members of the Town Council:

On behalf of the Special Committee on the Bethesda Downtown Plan, I hereby transmit to you a number of requests and recommendations from the Committee.

1. General Letter of Concerns to Planning Board

We request that the Town Council send a letter to the Planning Board no later than **July 14, 2016**, to express the Town's concern about a number of issues related to the draft Plan. Attached please find a draft letter prepared by the Committee for your consideration. It is also available in the BDP Dropbox folder.

2. Specific Letter to Planning Board regarding Density of Jaffe Property

On June 30, 2016, the Planning Board voted to increase the density awarded to the Jaffe lots bordering West Avenue. The lots are currently R-60; under the principles governing the conversion of R-60 lots, these should have been designated CRT-0.5, but the Board voted instead to make them CR-1.5 in order to give Mr. Jaffe additional free density. The Committee recommends that the Town Council send a letter to the Planning Board expressing concern about this arbitrary and inconsistent action. The letter should also be sent no later than **July 14, 2016** to ensure it comes to the attention of the Board members. A copy of the letter sent by me and several other individual residents to the Planning Board on July 5 is attached as a model for the Town Council. It is also available in the BDP Dropbox folder.

3. Community Meeting

The Committee recommends that the Town host a community meeting for residents to discuss the Plan before the County Council holds its public hearings. We suggest holding the meeting on Thursday, Sept. 8, 2016, and we request that the Town Council confirm the suitability of that date or provide the Committee with alternate dates for the meeting.

4. Town Forecast

The Committee requests that the Town Council approve the production and distribution of a special issue of the Town Forecast dedicated solely to issues surrounding the BDP. The Committee would prepare this issue for distribution prior to the September Community Meeting.

5. Subdivision Staging Policy

The Committee believes that important decisions are being made during the Planning Board worksessions on the Subdivision Staging Policy (SSP) that will affect the Town for years to come, particularly with respect to traffic studies and school issues. We recommend that the Town Council designate a committee to begin following the SSP and to report to the Town Council about it, including whether the Town should take any actions with respect to the SSP. We recommend that the Long Range Planning Committee be asked to take up this issue.

6. Legal Counsel

The Committee seeks guidance from the Town Council about when and how the Council would like the Committee to work with legal counsel. Among other things, we wish guidance from the Town Council on when legal counsel should be present for meetings.

Thank you for your consideration of these requests.

TO: Town Council
FROM: Land Use Committee
RE: Summary of Land Use Committee recommendations RE: Stormwater ordinance
DATE: July 7, 2016

In the fall of 2014, the Town Council requested that the Land Use Committee (LUC) review the advantages and disadvantages of:

- 1) Repealing the Town's stormwater ordinance and relying solely on the County's stormwater ordinance; or
- 2) Opting-out of the County stormwater ordinance and relying solely on a Town stormwater ordinance.

The review was requested because complying with both the Town and County ordinances was burdensome to residents and developers because:

- 1) Although the Town and County stormwater ordinances often require use of similar methods for stormwater control, they have different overall goals and so are sometimes in conflict;
- 2) Residents have to submit stormwater plans to both the County and the Town and obtain plan approvals from both; and
- 3) Residents must post two separate performance bonds until their stormwater system is approved.

The Land Use Committee in collaboration with members of the Town's Climate and Environment committee, the Water Board, the Town Water Engineer, and the Town Code Enforcement Officer, recommended to the Town Council in 2015 that the Town solve the two-ordinance problem by opting-out of the County stormwater ordinance. The Council then requested LUC to revise the Town's stormwater ordinance and executive regulations to ensure they meet State requirements.

Background:

In 2006, the Town responded to residents' concerns about increased runoff and associated property damage resulting from redevelopment in the Town by adopting a storm water ordinance (Chapter 28 of the Code of Ordinances). At the time, Montgomery County had a stormwater management ordinance (Chapter 19) that applied to development on large properties but not to development on small residential lots.

In 2007, the County adopted an ordinance dealing with run-off from projects that added 400 or more square feet of lot coverage on lots of 15,000 square feet or less (Chapter 8).

In 2010, the County substantially revised Chapter 19 to bring it into compliance with the Maryland Stormwater Management Act of 2007. The State required that the County's ordinance follow the State's model ordinance, which is focused on improving the quality of the stormwater that runs off into the Chesapeake Bay. Currently, construction of new houses within the Town are subject to the County's Chapter 19 ordinance and to the Town ordinance; smaller projects generally are subject to the County's Chapter 8 ordinance and to the Town's ordinance.

To forgo the County's ordinance, the Town must now make sure its own ordinance is in compliance with the State's Stormwater Management Act of 2007.

Reasons for Opting Out of the County Stormwater Ordinance:

The primary goal of the County ordinance is not to protect neighboring properties from increases in stormwater run-off. The County's (and State's) primary goal is to improve the quality of stormwater reaching the Chesapeake Bay. When there is development on a property, the County ordinance requires "treating" certain quantities of stormwater "to the maximum extent practicable"; it does not require retention of stormwater on the property. As a result, there is no guarantee that control measures installed in accordance with the County ordinance will protect neighboring properties. The Town ordinance does require retention of stormwater run-off on the property.

The County ordinance primarily applies only to construction of projects where 5,000 square feet or more of land is being disturbed; it does not include smaller projects such as additions and other types of new impervious surfacing. The Town ordinance covers smaller projects and tracks addition of impervious surface areas on a property that has been redeveloped within the past 2 years to ensure that any additional stormwater run-off is covered by a stormwater management plan.

The County's response to a stormwater management plan that does not treat all or most of the required volume of water often is to waive the requirement entirely in return for payment of a fee, which is then used to finance water projects elsewhere in the County. On the small and often hilly Town properties, it generally is not possible to treat all of the stormwater runoff required under the County ordinances or under the Town ordinance. While a waiver fee helps the County to meet its overall goals, it does nothing to protect neighboring properties, which is the goal of the Town ordinance. The Town works with the property owner to maximize retention of water on the property and to ensure that any stormwater runoff that cannot be retained on-site is conveyed to the street or other location that will not negatively impact neighbors.

The County does not conduct an on-site review early in the process and does not take into consideration the location of trees when evaluating stormwater management plans. The Town reviews submitted plans and visits the property to assess effectiveness and explore alternatives with the owner. The Town takes into consideration the location of trees on the property, particularly protected canopy trees. This promotes better coordination of the Town's building, tree, and stormwater requirements.

The County ordinance does not require that neighbors be notified when a stormwater plan is being developed for a property. The Town ordinance does. The opportunity to review and comment on the proposed plan is important to Town residents and can result in development of a better stormwater management plan, because neighbors often have knowledge about existing run-off conditions on the property.

The County uses soil type to assess percolation rates. The Town requires use of percolation soil tests to assess percolation rates. The percolation test is more accurate than soil typing.

The County generally inspects a new stormwater management system only when installation is complete. The Town inspects the system at several points during the installation process. This has proven to be important, because the submitted plan sometimes has to be altered due to conditions encountered during installation. The Town Engineer can then work through these changes. In addition, the Town's inspections ensure the systems comply with the approved plans throughout the installation process.

The County prefers gravel-filled drywells to the engineered drywells preferred in the Town. Engineered drywells are easier to inspect and maintain.

The County does not regularly inspect sediment control fencing, only responding when there is a complaint. The Town inspects construction sites regularly, including the sediment control fencing and can make sure the fencing is adequate and properly maintained.

The County does not inspect existing stormwater management systems to be sure they are functioning properly. The Town inspects systems annually to ensure proper function and performance.

Timeline of Committee's Work:

Spring 2015

- The LUC, and its collaborators, compared the Town and County ordinances and concluded that opting-out of the County ordinance and relying solely on a Town ordinance was the preferable choice.
- LUC presented its findings to the Town Council and the Council asked that the Town's ordinance be submitted to the State to see if it was sufficient to allow the Town to opt-out of the County ordinance.
- The State reviewed the Town's current ordinance in the Spring of 2015 and told the town that the ordinance was not sufficient; only an ordinance that follows the State model could be approved.
- The Town Council was informed of the State's ruling and determined that the LUC should draft a new Town stormwater ordinance that could be meet State approval.
- The LUC, and its collaborators, explored various options and chose to model a revised Town ordinance on the City of Rockville's stormwater ordinance, which the State had previously approved.

Spring, Summer, Fall 2015

- The LUC, and its collaborators, drafted a new stormwater ordinance using the City of Rockville's ordinance as a model and incorporated unique features of the Town's ordinance such as:

specifications about which construction projects the ordinance applies to, notification of neighbors, and annual inspection of stormwater systems.

- The LUC, and its collaborators, also drafted executive regulations as required by the State.

Fall 2015

- The LUC learned from the State that the ordinance must also include sediment control regulations. The Town's original intent had been to have the County continue to be responsible for this. Town staff informed the Committee that taking on this function would not be burdensome, as they already inspect sediment control fencing on construction sites within the town. Unlike the County, Town staff regularly visits construction sites to ensure compliance with building regulations. Having the Town administer sediment control regulations will further simplify the process for Town residents and builders, as well as reduce their costs, since they will then not have to pay the County sediment control permit fee.

December 2015

- The draft stormwater and sediment control ordinance and executive regulations were submitted to the State for review.

Spring 2016

- The State sent comments on the draft ordinance and executive regulations asking for some revisions. The LUC, and its collaborators, completed the revisions.

Next Steps:

- 1) The LUC requests that the Town Council approve submission of the revised draft ordinance and executive regulations to the State for review, as well as any subsequent resubmissions that may be necessary to obtain final State approval.
- 2) When the State approves the draft ordinance, the LUC recommends that the Town Council hold a work session to review the draft ordinance and executive regulations with LUC and its collaborators.
- 3) Once that review is complete, the Council can introduce the ordinance if it so desires, in which case a public hearing could be held the next month.
- 4) The LUC recommends that the Town apply now for a State sediment control license. The Town must apply for a State sediment control license for fiscal year July 1, 2017-June 30, 2018 by October 31, 2016. Applying for the license now will allow us to move forward in a timely manner if the Council approves the new Town ordinance.

MEMORANDUM

II-D

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Request for Temporary Suspension of Permit Parking Restrictions
DATE: July 13, 2016

At the July 13 meeting, Council is scheduled to discuss a request from the Montgomery County Board of Elections (MCBOE) to suspend permit parking around the Lawton Center during the General Election early voting period from October 22 to November 3. On June 20, I sent a letter to all residences surrounding the Lawton Center soliciting feedback on this request. I have not received any comments. Representatives from the MCBOE will attend the July 13 meeting to participate in this discussion.

MEMORANDUM

III-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Public Hearing on Starpower Cable Franchise
DATE: July 13, 2016

At the July 13 meeting, Council is scheduled to hold a public hearing on an ordinance granting a non-exclusive cable franchise to Starpower Communications. The ordinance was introduced by Council at the June 8 meeting. [Attached](#) are several supporting documents, including the proposed ordinance.

Fellow Council members:

Below are suggestions for our discussion regarding the Special Committee on Purple Line Mitigation. This is for agenda item II-A at the July 13 Town Council meeting. These ideas require thoughtful consideration to ensure that the Council directs the Special Committee appropriately.

Special Committee on Purple Line Mitigation

- **Mission Statement:** "The Special Committee on Purple Line Mitigation will develop a coordinated approach to ensure that the mitigation measures already agreed are in fact implemented; that additional mitigation measures are proposed if necessary; *and to address other issues which must be resolved, such as underpass access.*"

- **Potential Objective(s)** -- one or multiple -- requires Council decision
 - Objective 1: Mitigate the negative effects of the Purple Line

 - Objective 2: Ensure safe access to and across the Capital Crescent Trail and propose funding sources for related expenses (could be rolled into #1)

 - Objective 3: Prepare comments for a Draft Supplemental Environmental Impact Statement (DSEIS) if the citizens' lawsuit results in an opportunity to do so (needs Council decisions — [a] does the Town want to prepare comments and if so, [b] what are the appropriate roles for the Mitigation committee, the Council, Town staff, and groups and individuals?)

- **Potential Strategies** are to be decided by the Council after we clarify our objectives, evaluate possible mitigation measures, and as we understand our potential ability to influence the process.
 - *Examples:* collaborate with neighboring communities, enforce noise and traffic ordinances, media campaigns, request no work until the citizens' lawsuit is resolved, legal action, partner with M-NCPPC re: access path, etc

Potential Objective 1: Mitigate the negative effects of the Purple Line

Projects and Activities

- Identify potential negative effects related to Purple Line construction and ongoing operation (e.g., water quality, storm water flow, noise, parking and traffic, pedestrian safety during construction, visual mitigation of elevated tracks, nighttime light pollution, safe access to and across the trail, etc.).
 - Review work by prior committees
 - Review the official Record of Decision
 - Review EIS requirements, e.g. avoid, minimize, mitigate
 - Review P3 contract (may need professional assistance)
 - Obtain additional public input
- Establish baseline metric(s)
 - May require professional assistance
 - Examples: water quality, noise levels, trail access
- Identify legal thresholds and propose acceptable tolerance levels where appropriate
- Explore, define and prioritize potential mitigation measures (e.g., Town letters, code enforcement, new ordinances, public advocacy campaigns, legal action, etc.)
- Monitor Purple Line progress and changes
 - May need professional assistance
 - Coordination between committee and Town staff
- Facilitate communication
 - Town residents
 - Residents along the Purple Line
 - Residents with relevant expertise who are not already on the committee
 - P3 officials: MTA's Citizen Advisory Team (CAT) and others as appropriate
 - Other communities
 - Citizens' lawsuit plaintiffs, and/or committee members working on Objective #3

Committee Resources: pending

Potential Areas for Professional Assistance

- Legal review: provide advice after reading the P3 contract, project management plan
- Monitor change requests
- Monitor applications for permits and waivers
- Water quality testing and storm water flow management: baseline and ongoing
- Noise level testing: baseline and ongoing
- Legal action in the event harm is imminent or done

Strategies: tbd

Objective 2: Ensure safe access to and across the Capital Crescent Trail and propose funding sources for related expenses (could be rolled into #1)

Projects and Activities

- Recommended scope: safe access across the tracks in order to access the Capital Crescent Trail and points beyond, such as B-CC High School
- Define requirements for safe crossing
 - Review work by prior committees
 - Update the number and demographics of users accessing and crossing the trail from various Town locations, days of week, and time of day (e.g., students, commuters, recreational users/families)
- Evaluate to what extent the official plans for the Lynn Drive crossing fulfill requirements
- Evaluate the Town's obligations (financial and otherwise) for constructing the Lynn Drive crossing
- Identify ways people will access the trail if the Lynn Drive crossing is not opened
- Develop collaborative partnerships (the proposed Lynn Drive crossing leads to potential new park land on Montgomery Avenue)
 - Special Committee on the Bethesda Downtown Plan
 - M-NCPPC (Montgomery County Parks and Planning Department and Board)
- Facilitate communication
 - Town residents
 - P3 officials: MTA's Citizen Advisory Team (CAT) and others as appropriate
- Propose funding sources for the Lynn Drive crossing
- Propose modifications or alternatives to the Lynn Drive crossing proposal

Potential Areas for Professional Assistance

- Legal review: provide advice after reading the P3 contract and project management plan
- Design and engineering
- Construction cost estimates
- Legal assistance: agreements with property owners, M-NCPPC, or other partners

Committee Resources: pending

Strategies: tbd

Objective 3: Prepare comments for a Draft Supplemental Environmental Impact Statement (DSEIS) if the citizens' lawsuit results in an opportunity to do so

Notes: If the Town were to file comments in response to a DSEIS, the MTA and FTA will be required to respond. Any comment period is expected to be short.

Projects and Activities

- Identify scope of comments; for example, ask that comments be fully and fairly assessed:
 - For the 2013 preferred alternative (the existing plan)
 - For a reasonable range of transit options
- Identify topics for comment (and potential exclusion, e.g., ridership or budget)
 - Review general Environmental Impact Statement requirements
 - Review citizens' lawsuit briefs
 - Review Final EIS of 2013 and possibly Draft EIS of 2008
 - Review prior comments submitted by the Town and its consultants
 - Review work by prior committees
 - Coordinate with other communities
 - Obtain additional public input
- Prioritize topics for comment
- Propose comments
 - Examples for each topic:
 - Request that the State establish baseline metrics
 - Request that the State identify legal compliance thresholds
 - Request that the State set out compliance plans
- Facilitate communication
 - Citizens' lawsuit plaintiffs
 - Town residents
 - Residents along the Purple Line
 - Residents with relevant expertise who are not already on the committee
 - P3 officials: MTA's Citizen Advisory Team (CAT) and others as appropriate
 - Other communities

Committee Resources

- Citizens' lawsuit plaintiffs
- Others pending

Potential Areas for Professional Assistance

- Legal review of court order (from the citizens' lawsuit) when issued

Strategies: tbd