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September 29, 2022

VIA Email (PalmerK@charlescounty.md.gov)

Kelly M. Palmer, CFM  
Planner III, Zoning  
Dept. of Planning & Growth Management  
200 Baltimore Street  
La Plata, Maryland 20646

***Re: 30525 Three Notch Road, Charlotte Hall, Maryland 20622 – St. Mary's County, Maryland Tax Map 01, Grid 16, Parcel 77, 3.80 acres, more or less; St. Mary's County, Maryland Tax Map 01, Grid 16, Parcel 43 – 21.043 acres, more or less (collectively the "Bragg Property")***

Dear Ms. Palmer:

I am in receipt of PGM's comments regarding the above referenced proposed Zoning Map Amendment. I would offer the following responses for your review and consideration:

***Kelly Palmer, Planner III, Land Use and Zoning Review***

***1. Please provide a copy of the Application for a Zoning Map Amendment. One was not submitted with the initial submittal materials.***

**Response:** Please see attached.

***2. A listing of all persons, organizations, corporations or groups owning land adjoining or confronting the property for which the Local Map Amendment is requested must be provided as a separate attachment to the application. Please title this document as "Adjoining and Confronting" and include the full name and address for each entity listed as it is shown on the current assessment records of the Maryland Department of Assessments and Taxation.***

**Response:** As provided via email, please see attached. Please note that §297-448(O) was amended in 2014 to provide "At least 14 days prior to the Planning Commission public meeting, and again at least 14 days prior to the County Commissioners' public hearing, the applicant shall mail a certified letter of notification to each property owner whose land is within a two-hundred-foot radius of the property line that is the subject of the rezoning request. ***The applicable notification list shall be provided by the Planning Division to the applicant.***" Based on this provision, the Applicant assumed the list would be provided by the Planning Division. Apologies for any delay in transmitting.

3. *On page 8 of the letter addressed to Mr. Magoon, in the last paragraph, in the first sentence, there is a blank space that should read RR.*

**Response:** Noted and corrected.

4. *In the Statement of Justification provided, you have proffered that there was a mistake in the original zoning of the property based on an assumption that the County Commissioner's did not engage in a site-by-site analysis of the various properties zoned. The argument is also made that the bifurcation of the Bragg property and access to the Bragg Property were not considered by Charles County. After reviewing your statements and the zoning of the surrounding properties on the Charles County side, it is hard to establish an argument that there was a mistake. The surrounding land uses at the time of the mapping were existing, residential, large lot subdivisions and vacant, fully forested lands. The establishment of the Rural Residential (RR) zoning would have been consistent with the current land uses in place at the time. Please provide further justification as to why the Applicant feels that there was a mistake made in the original zoning based on the current land uses present at the time that the zoning was assigned.*

**Response:** The Applicant's submission cited several factors which the Applicant contends constitute a "mistake" in zoning. Specifically, the Applicant's submission stated:

With respect to the Bragg Property, the Commissioners did not take into account the bifurcation of the Bragg Property by the St. Mary's County/Charles County boundary line, access to the Bragg Property, the proximity of the Bragg Property to Three Notch Road and adjacent commercial development and St. Mary County's exercise of jurisdiction over the Bragg Property.

There is no evidence the Commissioners engaged in a site by site analysis during the 1996 Comprehensive Rezoning. The contention is that had the Commissioners engaged in a site by site analysis and had the Commissioners taken into account the above referenced facts, the Commissioners would not have zoned the Bragg Property RR. As the Court of Special Appeals noted in *White v. Spring*, 109 Md.App. 692 (1996),

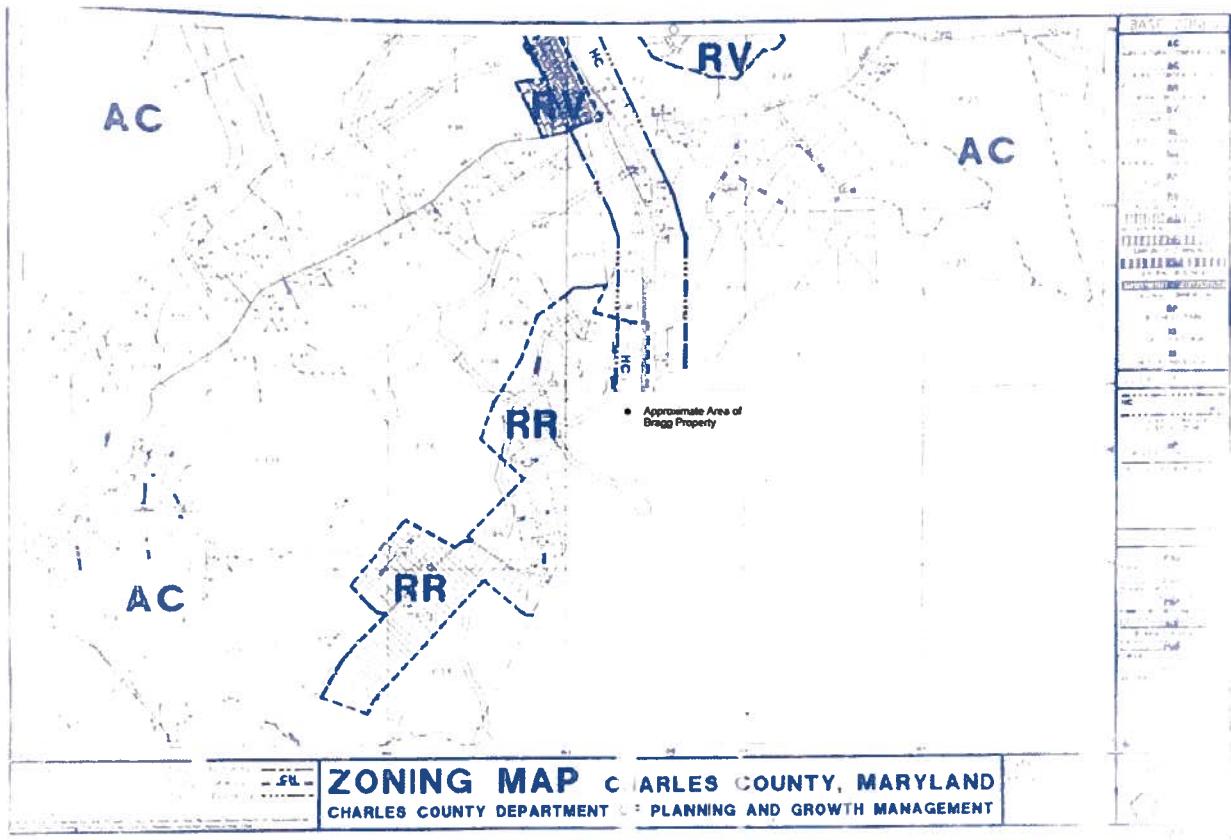
The finding of a mistake or error is not so much concerned with the logical validity or merit of ultimate conclusion-drawing as it is with the adequacy and accuracy of the *factual premises that underlie the conclusion-drawing*. A *conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error*; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.

*(emphasis added)*

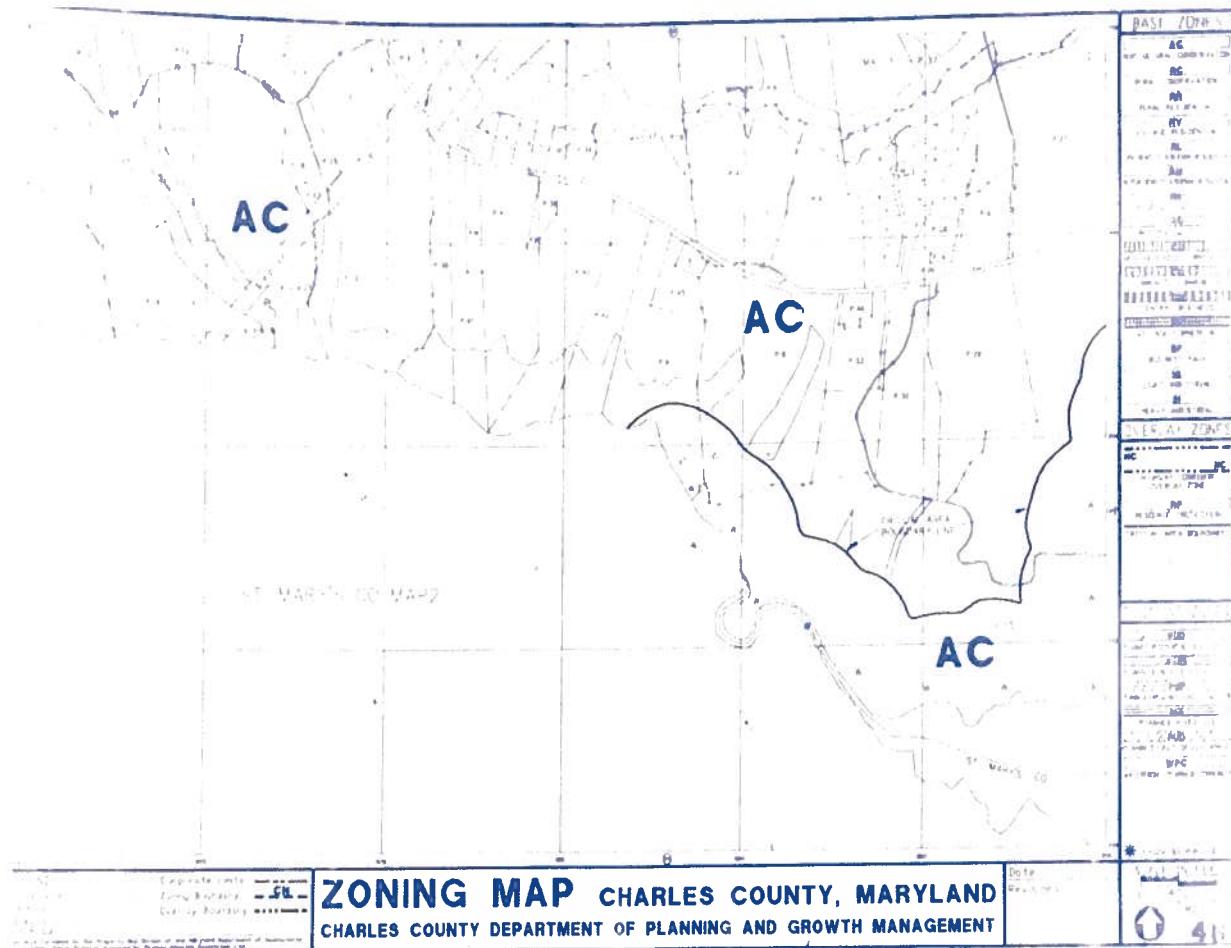
In the present case, the issue is what factual predicates were incomplete or inaccurate in the conclusion-drawing. Because the Commissioners did not engage in a site by site analysis, the factual predicate was incomplete. The Commissioners did not take into account the cumulative impacts of the bifurcation of the Bragg Property, the lack of legal and physical access to the Property from within Charles County, the Bragg Property's location at the gateway of both Charles and St. Mary's County, the fact that the majority of the Bragg Property lies within St. Mary's County, the fact that St. Mary's County has consistently exercised jurisdiction over the Bragg Property and the Bragg Property's proximity to commercial development.

Based on Staff's comments, the Applicant conducted a further review of County records and would proffer that either the Charles County Commissioners never applied a zoning category to the Bragg Property and now need to zone the Bragg Property or the Commissioners made a mistake in zoning the Bragg Property RR. When analyzing whether a mistake has occurred, reference is made back to the last Comprehensive Rezoning. 1992 was the last comprehensive rezoning of the properties in and around the Bragg Property. Per the 1992 Zoning Map 47 and Map 48 below, the Bragg Property was not identified and no zoning designation was attached.

**Map 47 -1992**



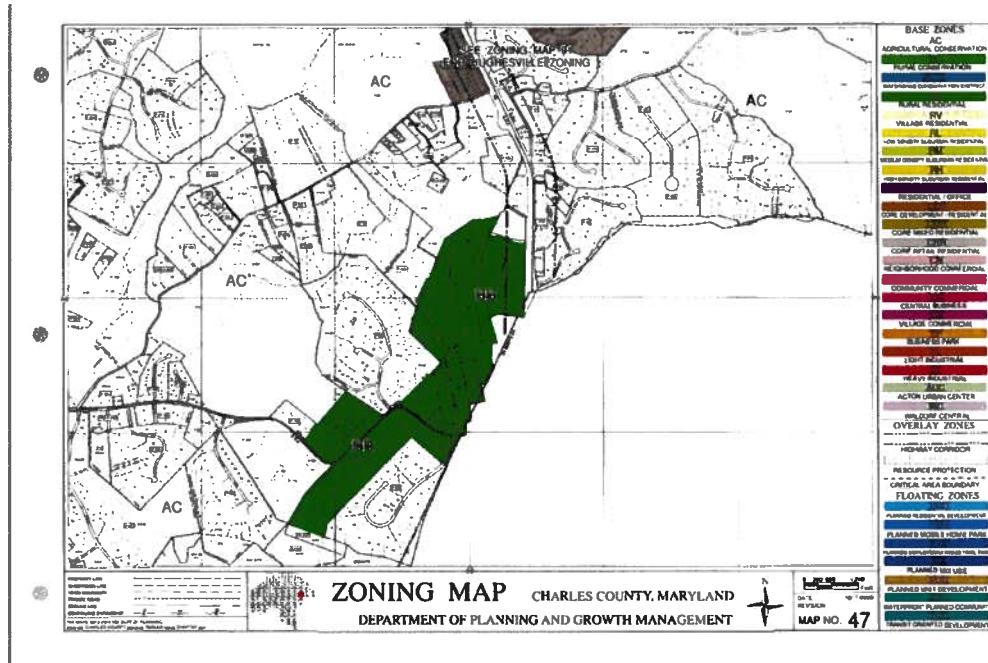
**Map 48 -1992**



After examining Zoning Map 47 and 48, it appears the County mistakenly believed the Bragg Property was located within St. Mary's County. This is buttressed by the fact that Charles County has no tax map or tax identification associated with the Property.

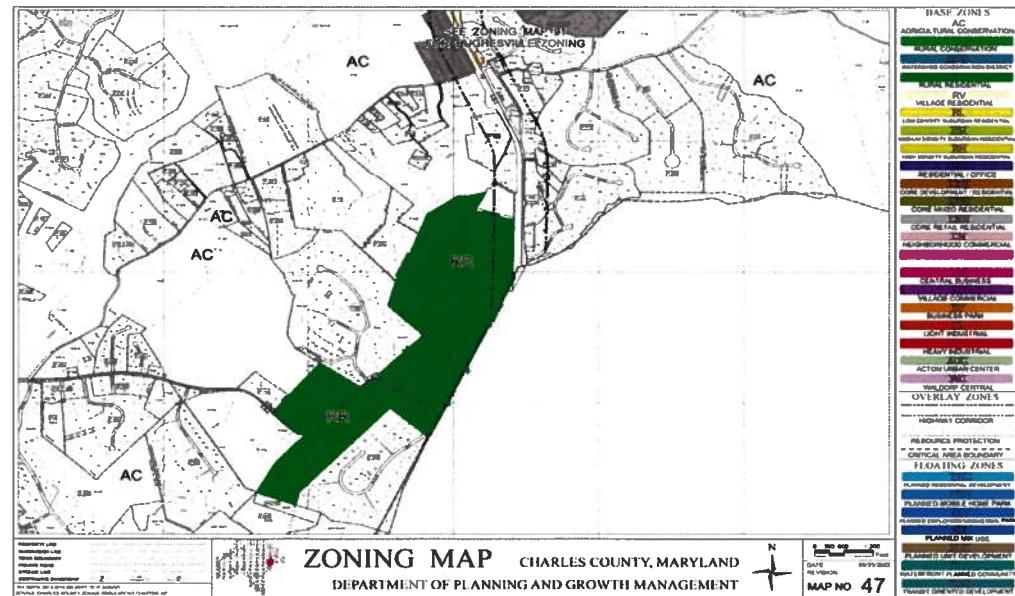
A review of Zoning Map 47 dated 12/1/2000 (*see below*) also reveals a failure to attach zoning designation to the Bragg Property.

## Map 47 -2000

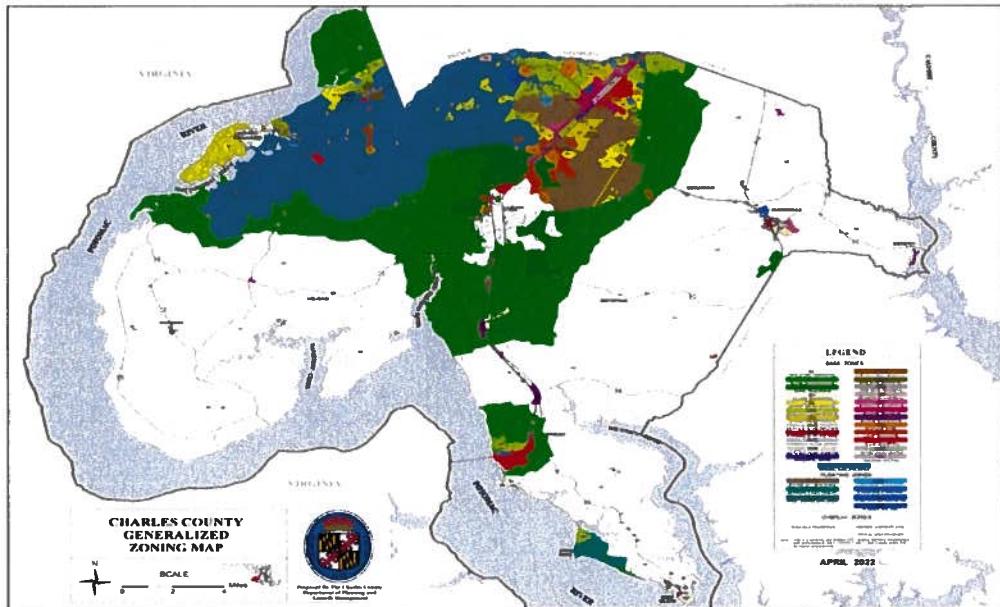


The failure to attach zoning, under the mistaken premise that the Bragg Property lay within St. Mary's County, is consistent with the lack of Charles County Tax Identification Number.

Sometime after the Applicant had a preliminary meeting with County staff, Zoning Map 47 was modified to attach Zoning to the Bragg Property (See below Zoning Map 47 dated 5/25/2022).



The Generalized Zoning Map still appears to show the Bragg Property without any zoning designation.



In the event the Commissioners never established a zoning designation for the Bragg Property, there is no need to establish a mistake. Instead, it is appropriate for the Commissioners to now establish a zoning designation. The Applicant contends that such zoning should be CC, Community Commercial.

Alternatively and in the event the County demonstrates the Commissioners did in fact zone the Bragg Property RR, then the Applicant maintains such zoning was a mistake. Staff contends that

The surrounding land uses at the time of the mapping were existing, residential, large lot subdivisions and vacant, fully forested lands. The establishment of the Rural Residential (RR) zoning would have been consistent with the current land uses in place at the time.

Staff is correct that RR zoning would have been consistent with surrounding land uses within Charles County. Staff is incorrect that the adjacent properties were predominately large lot subdivisions and undeveloped forest. Records show that in 1992, the Bragg Property abutted properties within Charles County which were already developed. Within Charles County's boundaries, two subdivisions adjoin the Bragg Property: Karen Knolls Subdivision and Oakland Acres Subdivision. The plat of subdivision for Karen Knolls was recorded in 1974. Lot sizes within Karen Knolls range between 2.01 acres and 9.3 acres. Karen Knolls Subdivision contained eleven (11) lots. Seven (7) of the eleven (11) lots are less than 3 acres in size. Only three (3) of the eleven (11) lots are

larger than five acres. The two (2) lots within the Karen Knolls Subdivision ( 7340 Denise Lane, Hughesville and 7345 Denise Lane, Hughesville) which abut the Bragg Property contain houses which were both built in 1976. These lots do not provide legal or physical access to the Bragg Property. The lack of legal and physical access would have been reflected on the plats of subdivision in existence in 1992

The first subdivision plat for Oakland Acres was recorded in 1965 and contained eleven (11) lots between 1.1 and 1.2 acres in size. As Oakland Acres has developed, lots have varied in size, with a few larger lots of between 6 and 7 acres. Within the Oakland Acres Subdivision there are five (5) lots which adjoin the Bragg Property. Three (3) of the five (5) lots contain homes that were built between 1980 and 1987. None of the lots provide legal or physical access to the Bragg Property. All of the lots prohibit physical access to the Bragg Property. The lack of legal and physical access would have been reflected on the plats of subdivision in existence in 1992.

In 1992, the Bragg Property within St. Mary's County was bounded by existing commercial development, to include the popular McKay's Grocery store and commercial center.

As stated in the original Application, if the Commissioners had known and taken into account the bifurcation of the Bragg Property by the St. Mary's County/Charles County boundary line, access to the Bragg Property (to include lack of access within Charles County), the proximity of the Bragg Property to Three Notch Road and adjacent commercial development and St. Mary's County's exercise of jurisdiction over the Bragg Property, then in that event, the Commissioners would not have zoned the Bragg Property RR.

*5. As mentioned later by our Long Range and Preservation Planning team, the proposed map amendment is not consistent with the goals and objectives of the 2016 Charles County Comprehensive Plan, because this property is not within a designated employment area or designated village within Charles County.*

**Response:** Comprehensive Plan Goal 3.6 sets as a goal the location of future employment uses “in **or near** existing employment areas, including selected villages.” Contrary to staff’s assertion employment uses are not required to be located “in” an employment area or designated village. Nor does Goal 3.6 require employment uses abut or lie adjacent to employment areas or villages. Rather Comprehensive Plan Goal 3.6 includes locations “**near**” employment areas or designated villages. The Bragg Property is less than one (1) mile from the Hughesville Village boundary. The Bragg Property is approximately one (1) mile from the Hughseville Village Center boundary (the core of the Hughesville Village).

Additionally, Goal 3.6 contains no verbiage requiring the employment area be located within Charles County. As noted in the original application, the Bragg Property lies within the Charlotte Hall Town Center, an employment area within St. Mary's County, Maryland. Goal 3.6 works in concert with Goal 3.7 which states

Coordinate on regional issues by nurturing good, working relationships with the State, with neighboring jurisdictions especially Calvert, Prince George's, and St. Mary's Counties, and with the Towns of Indian Head and La Plata through planning agreements, plan referrals, information sharing, and consultations.

Rezoning the Bragg Property to permit development consistent with St. Mary's County's vision of the Charlotte Hall Town Center implements Goal 3.7. This is particularly important as the Bragg Property is physically inaccessible from Charles County and is accessible through St. Mary's County and within the Charlotte Hall Town Center.

It is also significant as the Bragg Property demarcates the gateway between Charles County and St. Mary's County. This is also consistent with Charles County's five year Economic Development Strategy adopted in 2016. The 2016 Economic Development Strategy established an action plan of creating and improving gateways into the County.

*6. The Bragg property appears to front on the Three Notch Trail which is a heavily traveled hiker/biker trail that runs through St. Mary's County, Maryland. What impact would the change from RR to CC Zoning have on this trail? A change from vacant land to commercial development could potentially create more commercial development in the area of the trail which could pose a safety risk to pedestrians along the trail. Staff would need to coordinate with St. Mary's County Department of Land Use and Growth Management to ensure that any required buffers along this trail are met.*

**Response:** The Three Notch Trail has no bearing on this Zoning Map Amendment. The portion of the Bragg Property containing the Three Notch Trail lies within the jurisdiction of St. Mary's County. It lies within an area of St. Mary's County zoned Town Center Mixed Use ("TMX"). Per §31.10 of the St. Mary's County Zoning Ordinance, TMX zoning

[P]rovide opportunities for residential and commercial development within town centers, consistent with the Comprehensive Plan. Standards are intended to create an urban character and make the core area safe, pedestrian friendly, and visually attractive.

Any development of the Bragg Property containing the Three Notch Trail would be regulated by St. Mary's County as part of St. Mary's County's site development plan process.

**Amy Blessinger, Planner III, Long Range and Preservation Planning Long-Range/Preservation Planning staff have reviewed the subject application for consistency with the goals and objectives of the 2016 Charles County Comprehensive Plan as required under § 297-448(G) of the County Zoning Ordinance.**

*The subject property is located in an area designated as Rural Residential District on the County's Land Use Map in the 2016 Comprehensive Plan, with a base zone of Rural Residential (RR).*

*Staff has the following findings in regard to the proposal's consistency with the goals and objectives of the 2016 Comprehensive Plan:*

Chapter 3, Land Use:

- *The intent of the Rural Residential land use district is to allow for rural residential development at one unit per three acres while preserving the rural character and open space whenever possible. It is not the intent of the Plan that commercial uses be located in this district. Thus, staff finds that the proposed rezoning is not consistent with the current land use designation in the Comprehensive Plan.*

**Response:** Staff comment ignores inability to legally or physically access the Bragg Property from Charles County. It further ignores that the Bragg Property consists of two parcels. The St. Mary's Gateway Property has less than 3 acres in Charles County. While the Williams Property has approximately 5 acres in Charles County, the inability to access the Property from Charles County and its remaining TCX zoning make it unsuitable for development under the RR designation. If staff concurs that the portions of the land located within Charles County remain as "open space" or preserved green space as opposed to being placed in a tax revenue production, then in that event, I would respectfully request staff prepare a request to purchase the Bragg Property.

- *The applicant's justification document includes a statement that the proposed rezoning would help fulfill Comprehensive Plan Goal 3.6 to locate future employment uses in and near existing employment areas, including selected villages. However, this provision does not apply to this property as it is not located in any existing Charles County employment areas or designated villages.*

**Response:** Comprehensive Plan Goal 3.6 sets as a goal the location of future employment uses "in or near existing employment areas, including selected villages." Contrary to staff's assertion employment uses are not required to be located "in" an employment area or designated village. Nor does Goal 3.6 require employment uses abut or lie adjacent to

employment areas or villages. Rather Comprehensive Plan Goal 3.6 includes locations “near” employment areas or designated villages. The Bragg Property is less than one (1) mile from the Hughesville Village. The Bragg Property is approximately one (1) mile from the Hughesville Village Center.

Additionally, Goal 3.6 contains no verbiage requiring the employment area be located within Charles County. As noted in the original application, the Bragg Property lies within the Charlotte Hall Town Center, an employment area within St. Mary’s County, Maryland. Goal 3.6 works in concert with Goal 3.7 which states

*Coordinate on regional issues by nurturing good, working relationships with the State, with neighboring jurisdictions especially Calvert, Prince George’s, and St. Mary’s Counties, and with the Towns of Indian Head and La Plata through planning agreements, plan referrals, information sharing, and consultations.*

*(emphasis added)*

Rezoning the Bragg Property to permit development consistent with St. Mary County’s vision of the Charlotte Hall Town Center implements Goal 3.7. This is particularly important as the Bragg Property is physically inaccessible from Charles County and is accessible through St. Mary’s County and within the Charlotte Hall Town Center.

The fact that the Bragg Property lies as the gateway to St. Mary’s County/the Charlotte Hall Town Center underscores the importance of coordinating and ensuring proper and compatible zoning at this location. In 2016, Garner Analytics prepared a “2016 Competitive Realities Report” aimed at developing an economic development strategy for Charles County. The Report recommended creating and improving gateways in and throughout the County.

- *The applicant’s justification document includes a statement that the proposed rezoning would help fulfill Comprehensive Plan Goal 3.7 to concentrate commercial and business areas in the development district, towns, and village centers. However, this provision does not apply to this property as it is not located in an existing Charles County development district, town, and village center.*

**Response:** Please see response above.

#### Chapter 7, Economic Development

- *The applicant’s justification document includes a statement that the proposed rezoning would help fulfill commercial corridor revitalization to promote infilling of business uses. However, this provision does not apply in this case as the property is not located in a commercial corridor in Charles County.*

Please see responses noted above. The Applicant intends to supplement this submission with a letter of support from both the Charles County Economic Development Department and the St. Mary's County Economic Development Department.

I trust the above information answers your concerns. My client desire to move forward to the next available Planning Commission Hearing date.

Respectfully,



Sue A. Greer