

**COUNTY COUNCIL OF FREDERICK COUNTY  
MEETING MINUTES  
Tuesday, September 15, 2020**

Council Members M.C. Keegan-Ayer, President; Michael Blue, Vice-President, Jerry Donald, Kai Hagen, Jessica Fitzwater, Phil Dacey and Steve McKay were present for the meeting.

Also present were Ragen Cherney, Chief of Staff, County Council; Bryon Black, County Attorney; Catherine Keller, Assistant County Attorney; Sarah Ambrosio, Recording Secretary; and Nancy Luna, Executive Assistant, County Council.

Council President M.C. Keegan-Ayer called the meeting to order at 5:30 p.m. virtually via video conference.

**Opening Statement from Council President M.C. Keegan-Ayer**

Good Evening and welcome to the virtual meeting of the Frederick County Council. Today is Tuesday, September 15, 2020, and it is a legislative day for the County Council.

The Frederick County Council is continuing to conduct our meetings on-line during this time and it seems this may be the way we will be holding our meetings for the foreseeable future due to concerns about the spread of the COVID virus.

Our meetings are televised on Frederick County Government Channel 19, on Frederick County Government's website: [www.FrederickCountyMD.Gov/FCGTV](http://www.FrederickCountyMD.Gov/FCGTV), and while we are meeting virtually, we will continue to use our software program which allows the public to watch and participate in our meetings. Please go to [www.frederickcountymd.gov/councilmeetings](http://www.frederickcountymd.gov/councilmeetings) in order to watch us on that format.

You may still send us comments via email at: ([Councilmembers@frederickcountymd.gov](mailto:Councilmembers@frederickcountymd.gov)), or by calling our office line (301) 600-1135 and leaving a voicemail message. Or using our virtual format, you may call toll free 855-925-2801 and enter meeting code 8365 to listen to our meetings live and to give public comment. I will be giving instructions for how to give public comment before each portion of our meeting when public comment will be received. As always, all comments received will be reflected in the minutes.

As a reminder during these virtual meetings, I will periodically stop to allow the members to ask any questions in a round robin type fashion, calling the council members by name to make sure the public is aware of which member has the floor.

As a continued caution to our Council Members – Please be respectful of each other's time and wait to be recognized before you begin to speak. Remember the microphone issue and please limit your questions to one at a time. I will come back around as often as necessary until all questions are heard.

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To begin our meeting, I will start with a roll call vote to determine a quorum. Just respond with “here”. Again, going in alphabetical order: CM Blue, Dacey, Donald, Fitzwater, Hagen, and McKay. A quorum having been established, we will begin our meeting.

The meeting began with a moment of silence followed by the Pledge of Allegiance.

**Action on the Agenda**

*Council Member Michael Blue moved to approve the agenda with the proviso of moving Items V.c., and V.d, Action on Cromwell PUD Rezoning Case 3R-19-01 and Delauter-Hutzell MXD Rezoning Case #R-19-02 to be occur after the Third Reading Calendar. Council Member Jerry Donald seconded the motion that passed 7-0.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Public Comment was heard from:**

- Gretta Nettleton
- Tony Santos
- Stan Mordensky
- Lisa Bell

**Business Items:**

**Budget Adjustments**

- J-21-056 – Developmental Center, Health Services Division
- J-21-057 – Senior Services Division
- J-21-063 – Budget Office
- J-21-065 – Utilities and Solid Waste Management Division
- J-21-066 – Workforce Services, Office of Economic Development

*Council Member Jessica Fitzwater moved to approve Budget Adjustments J-21-056, J-21-057, J-21-063, J-21-065, and J-21-066 as presented. Council Member Kai Hagen seconded the motion that passed 7-0.*

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Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Approval of Minutes from August 11, August 18, August 25, September 1, and September 3, 2020 and Closed Session Minutes from August 18, and August 25, 2020.**

*Council Member Jessica Fitzwater moved to approve the minutes from August 11, August 18, August 25, September 1, and September 3, 2020 and Closed Session Minutes from August 18, and August 25, 2020.as presented. Council Member Michael Blue seconded the motion that passed 7-0.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Public Hearing - FY-2021 Maryland Agricultural Land Preservation Foundation (MALPF) Easement Acquisition Program.**

Ann Bradley, Planning and Permitting provided information to the Council on the FY-2021 Maryland Agricultural Land Preservation Foundation (MALPF) Easement Acquisition Program.

Public Comment was heard from:

- None

*Council Member Kai Hagen moved to approve FY-2021 Maryland Agricultural Land Preservation Foundation (MALPF) Easement Acquisition Program Parcel #21-03CF,*

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#21-05NG, #21-24CF, #21-26CF, #21-28CF, #21-30NG, #21-34NG, #21-40CF, #21-44CF, #21-45CF, #21-48CF and #21-49NG as presented. Council Member Jessica Fitzwater seconded the motion that passed 7-0.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Finalization of 2021 General Assembly Legislative Council Requested Items to take to Public Hearing**

Council Member discussed items that would be taken to the 2021 General Assembly Legislative Council Requested Items to take to Public Hearing on September 22, 2020.

1. To provide for limited special elections to fill vacancies on the Frederick County Board of Education.
2. Position Statement in support of legislation regarding required advertising for the setting of the Constant Yield Tax rate.
3. Position statement in support of the Maryland Strategic Energy Initiative Investment Fund – Regional Greenhouse Gas Initiative – Use of Proceeds for Maryland Healthy Soils Program.
4. Position statement in support of local zoning authority for large solar utility projects.

**Third Reading Calendar**

**Amended Bill No. 20-12 - Amend and Update Chapter 1-22 Article I, Development Impact Fee Procedures and Requirements, and Article II, Public School Development Impact Fee, of the Frederick County Code**

Council Member Phil Dacey moved to approve Amended Bill 20-12 - Amend and Update Chapter 1-22 Article I, Development Impact Fee Procedures and Requirements, and Article II, as presented. Council Member Steve McKay seconded the motion that passed 4-3.

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Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald		X	
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue		X	
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer		X	

**Bill No. 20-14 - Modifying Waterbody Buffers**

*Council Member Jerry Donald moved to approve Bill 20-14 - Modifying Waterbody Buffers, as presented. Council Member Jessica Fitzwater seconded the motion that passed 5-2.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue		X	
At-large – Dacey		X	
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Bill No. 20-15 – Defining a “Farmers Market” in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned Institutional**

*Council Member Steve McKay moved to approve Bill 20-15 – Defining a “Farmers Market” in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned Institutional, as presented. Council Member Kai Hagen seconded the motion.*

*Council Member Steve McKay moved to approve Amendment 1 to Bill 20-15 – Defining a “Farmers Market” in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned*

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*Institutional, as presented. Council Member Kai Hagen seconded the motion that passed 7-0.*

**AMENDMENT 1 on Bill No. 20-15**

**Introduced By:** Council Member McKay (District 2)

**Introduction Date:** September 15, 2020

**Adopted/Rejected/Withdrawn:** \_\_\_\_\_

An ACT to Define farmer’s market, allow farmers market as a Temporary Outdoor Activity within certain zones, and include farmers market as a customary accessory use on properties zoned Institutional.

On Exhibit 1, Page 1, it is hereby amended as follows:

(C) Farmers Market. An applicant may apply for a temporary use permit for a farmers market from the Zoning Administrator. This permit shall be issued for a period up to 180 calendar days. A farmers market may operate only on weekends and shall be open to the general public. Except as provided in §1-19-8.210, a farmers market shall be permitted in the VC, MX, LI and GC zones, and within MXD and PUD overlays. The Zoning Administrator shall determine that the site is adequate for this temporary use according to the following:

- (1) The proposed activity is in compliance with all safety, health, and environmental standards, and is not detrimental to the surrounding area.
- (2) The site is of sufficient size to accommodate the farmers market use, including a buffer zone of at least 50 feet from all adjacent property lines.
- (3) Safe and orderly flow of traffic can be ensured.
- (4) Musical entertainment, if proposed, shall cease at dusk.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

*Council Member Steve McKay moved to approve Amendment 2 to Bill 20-15 – Defining*

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a "Farmers Market" in the Zoning Ordinance, as a specific type of Temporary Outdoor Activity in certain zones, and as a Customary Accessory Use on property zoned Institutional, as presented. Council Member Jerry Donald seconded the motion that passed 7-0.

AMENDMENT 2 on Bill No. 20-15

Introduced By: Council Member McKay (District 2)  
Introduction Date: September 15, 2020  
Adopted/Rejected/Withdrawn: \_\_\_\_\_

An ACT to Define farmer’s market, allow farmers market as a Temporary Outdoor Activity within certain zones, and include farmers market as a customary accessory use on properties zoned Institutional.

On Exhibit 1, Page 1, it is hereby amended as follows:

(C) Farmers Market. An applicant may apply for a temporary use permit for a farmers market from the Zoning Administrator. This permit shall be issued for a period up to 180 calendar days. A farmers market may operate only on weekends and shall be open to the general public. Except as provided in §1-19-8.210, a farmers market shall be permitted in the VC, MX and GC zones, and within MXD and PUD overlays. The Zoning Administrator shall determine that the site is adequate for this temporary use according to the following:

- (1) The proposed activity is in compliance with all safety, health, and environmental standards, and is not detrimental to the surrounding area.
- (2) The site is of sufficient size to accommodate the farmers market use, including a buffer zone of at least 50 feet from all adjacent property lines.
- (3) Safe and orderly flow of **PARKING AND** traffic can be ensured.
- (4) Musical entertainment, if proposed, shall cease at dusk.

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

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Council took a break from 7:50 p.m. to 8:00 p.m.

**Discussion and Action on Cromwell PUD Rezoning Case #R-19-01**

Council member discussed the Cromwell Rezoning Case #R-19-01.

*Council Member Steve McKay moved to deny the Cromwell PUD Rezoning Case # R-19-01. Council Member Jerry Donald seconded the motion that failed 3-4.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater		X	
District 5 – Blue		X	
At-large – Dacey		X	
At-large – Hagen		X	
Presiding Officer – Keegan-Ayer	X		

*Council Member Kai Hagen moved to approve Cromwell PUD Rezoning Case #R-19-01 with approval of all Planning Commission Recommendations and open to additional conditions. Council Member Phil Dacey seconded the motion.*

*Council Member Jerry Donald moved to approve that the entire Lake Linganore Blvd be completed before the first Plat is recorded. Council Member Steve McKay seconded the motion that passed 6-1.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue		X	
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

Council Members discussed the conditions in the Cromwell PUD Rezoning Case #R-19-01. Council agreed by show of hands on the conditions brought forth by the applicant and also additional conditions brought forth by Council Members. The conditions are:



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1. The project shall permit a maximum of 600 residential, age-restrict dwelling units.
2. There shall be no direct motorized vehicle access to Meadow Road from the project.
3. Covenants shall restrict 100% of the dwelling units of the Cromwell PUD project to be age-restricted per the Federal Fair Housing Act and the Housing for Older Persons Act of 1995. There shall be a further limitation on the minimum age of permanent residents being 19 years of age. These covenants shall be recorded and made part of the title for each dwelling unit. Every property owner within the age-restricted development (and HOA) shall be beneficiaries of the covenants with the ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office to ensure that the PUD zoning district is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (24 cfr 100.307) shall be made available to the County for its review and records.
4. Prior to recordation of the first residential subdivision plat, the developer shall: (1) dedicate and convey to the County, the +/- 4-acre public use site identified on the Concept Plan in a development-ready state (site graded, public water & sewer connections available to the site, and stormwater management facilities [for quantity] completed); or (2) or at the County's discretion, enter into a mutually agreeable Memorandum of Understanding to provide for the conveyance of the site and the condition under which the land will be conveyed.
5. Prior to recordation of the first residential subdivision plat, Lake Linganore Boulevard must be constructed in its entirety and open to traffic.
6. The connection of Neuville Street to Lake Linganore Boulevard shall not be open to traffic until Lake Linganore Boulevard is open to traffic from Meadow Road to its current terminus in Linganore Town Center.
7. If the historic structures are proposed for demolition, the Applicant shall provide the County with access to the site/s in order to document the house, outbuildings, and other related structures at least 90 days prior to the start of demolition.
8. The Applicant shall have a qualified professional investigate and locate any cemetery or burial ground that may be located on the site prior to Preliminary Plan and prior to any grading activities.
9. The Applicant shall address and resolve the issue of vehicular access to the property of Mary A. Stull & Martin E. Castle Sr.
10. During the Phase II process, the applicant shall deal with buffering and screening for noise and light pollution concerns of property owners on Hutzell Road.

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11. Substantial natural screening for people on Meadow Road as well – combination of berms and plants.

*Council Member Kai Hagen moved to postpone discussion on conditions for Cromwell PUD Rezoning Case #R-19-01 until Tuesday, September 22, 2020. Council Member Phil Dacey seconded the motion that passed 7-0.*

Council Members	Aye	Nay	Absent/ Abstain/ Present
District 1 – Donald	X		
District 2 – McKay	X		
District 4 – Fitzwater	X		
District 5 – Blue	X		
At-large – Dacey	X		
At-large – Hagen	X		
Presiding Officer – Keegan-Ayer	X		

**Public Comment was heard from:**

- Leslie McMullen

**Council Member Comments:**

Council Member comments were provided.

**Adjourn**

The meeting adjourned at 10:55 p.m.

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M.C. Keegan-Ayer, President  
County Council