

## TIMELINE FOR THE 2018 PATUXENT RIVER COMMISSION SCOPE OF POWERS CONTROVERSY

### Compiled by Patuxent Riverkeeper

**March 14, 2018**--At its regular meeting, the Patuxent River Commission (PRC) votes to draft and issue a letter of comment raising various concerns about the proposed development project in Savage, MD called the "Villages at Savage Mill", a housing sub-division that was the subject of Planning Board hearings earlier in the year. Notably, the Planning Board refused to allow testimony in the record of the planned public park law swap. Of particular concern to Commissioners are the sensitive ecological site conditions on the tract, and the proposed swap of County park land required by the developer in order to complete the project. Co-chairs Michael Leczs and Fred Tutman conducted the meeting.

**March 19, 2018**--As agreed at the earlier meeting, Commissioner Barbara Sollner-Webb drafted a letter for the review of Commissioners and sent the draft to State staffer Jason Dubow at Maryland Department of Planning (MDP) requesting he circulate it in order to get edits, feedback and consensus from the Commissioners.

**April 18, 2018**--After multiple follow-up emails from Ms. Webb Mr. Dubow finally indicates in an email to the full Commission listserv that he is unwilling to circulate the draft letter because of "legal concerns" raised by the Secretary of MDP.

MDP staff convenes an agenda setting meeting for the PRC<sup>1</sup>. Mr. McCord announced that the Agency's attorney (Ms. Delony) has provided them with legal advice that indicates the PRC lacks the legal authority under its statute/charter to comment on any private development project, moreover that the Secretary has the express powers to set policies related to commentary exercised by the Commission. Unaware at the Commission that we had an attorney, the Commissioners on the call invited Ms. DeLony and the Secretary to the next PRC meeting in order to explain their position to the rest of the Commission<sup>2</sup>.

**July 3, 2018**--Mr. Tutman Ms. Sollner-Webb requested legal assistance from Earth Justice in Washington, DC. Earth Justice is private non-profit environmental law firm. Earth Justice assigned three lawyers to the project.

**July 11, 2018**--At this PRC meeting the Secretary and Ms. Delony produce a letter issued under Mr. McCord's signature purporting to be based on legal advice obtain from Ms. Delony who declines to answer most question put to her about the details in the memo by the Commissioners and instead fields

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<sup>1</sup> Present were Chris Perry (co-chair); Fred Tutman (Co-Chair), Mike Leczs (Co-Chair); Jason Dubow (MDP Staff assigned to the PRC); Robert McCord (Secretary of Planning); Rieyn DeLony (Deputy Counsel, MDP) and Barbara Sollner Webb (Commissioner).

<sup>2</sup> . Ms. Delony indicated that by virtue of being the attorney for MDP it makes her the attorney for the Commission as well and that she is an objective and unconflicted counsel because she does not actually work for MDP but rather is employed by the Office of the Maryland Attorney General..

nearly all legal questions to Mr. McCord. The Commissioners take the McCord letter with them to review at the end of the meeting with an understanding it will be debated and discussed subsequently.

**July 23, 2018**—During an agenda setting meeting, State staff inform the Commissioners that they have a forthcoming legal opinion to be made available at the next meeting. We are told that the opinion clarifies that it is unlawful for Commissioners to seek legal advice from any other source except the MDP designated attorney.

**August 7, 2018**—Earth Justice released its legal memo based on their review of the earlier “McCord memo” that completely debunks the legal interpretation provided by the State agency. The Earth Justice analysis argues that the Commission not only had the authority to comment but the implied obligation to do so based on its charter powers.

**August 8, 2018**--At this next PRC meeting the State produced a much more expanded written legal opinion produced by MS. Delony. This latest memo (actually dated two months prior) expands on various statutory interpretation theories that largely revolve around the theory that PRC is defined as a “unit of State government” located “within the department” and that this relationship explicitly makes clear that the Commission is a subordinate “unit” under the direction of the Secretary of Planning<sup>3</sup>

Also at the same meeting the annually scheduled election of PRC officer is held. MDP staff produces the by-laws of the Commission indicating there really is not actual position of Co-chair on the PRC so the election will be for the Chair and Vice Chair. Tutman and Leczs both run for the job of Chair. Another Commissioner (Chris Perry) runs unopposed for Vice-Chair. Mr. Leczs makes a campaign speech in which he argues that he is unwilling to serve on the PRC in the future if it has the authority to comment on private land use matters. It is the only platform/promise in his campaign for Chair. He is elected by the Commissioners present 12-5 in favor.

**August 9, 2018**--Mike Leczs sends an email to Fred Tutman copied to the J. Dubow indicating his decision upon assuming the Chairmanship that he accepts the legal opinions provided by the State over the ones issued by EarthJustice and makes clear his intention to limit future debate on the subject.

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<sup>3</sup> . Interestingly, the first paragraph of the legal memo indicated that the Commission may actually have the right to comment on development matters but then further into the memo it argues that Mr. McCord ultimately sets commentary policies for the Commission. In effect, one could reason from this memo that Mr. McCord can waive or permit certain commentary by the PRC at his discretion. There are several other legal theories raised but many are supported in the memo by either vague or non-existence legal citations. The memo has a broad disclaimer on the final page that indicates it is not to be taken as an “official position of the Office of the Attorney General”