



# MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB

ITEM#

11/30/06



## MEMORANDUM

**DATE:** November 17, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Catherine Conlon, Subdivision Supervisor *CC*  
Development Review Division

**FROM:** Richard Weaver, Planner Coordinator (301) 495-4544 *RAW*

**REVIEW TYPE:** Preliminary Plan of Subdivision

**APPLYING FOR:** Resubdivision of Part of Lot 5, Part of Lot 7 and Part of Lot 8, Block I,  
Hillmead - Bradley Hills

**PROJECT NAME:** Hillmead/Bradley Hills

**CASE #:** 120060480

**REVIEW BASIS:** Chapter 50, including Sec. 50-29 (b)(2), Montgomery County Subdivision  
Regulations

**ZONE:** R-60

**LOCATION:** Located in the southeast corner of the intersection of Valley Drive and  
Ridge Road.

**MASTER PLAN:** Bethesda-Chevy Chase

**APPLICANT:** Phyllis T. Piotrow

**FILING DATE:** October 14, 2005

**HEARING DATE:** May 12, 2006 and November 30, 2006

**I. STAFF RECOMMENDATION: Approval of four lots, subject to the following conditions:**

- 1) Approval under this preliminary plan is limited to four residential lots.
- 2) The applicant shall comply with the conditions of approval of the preliminary forest conservation plan (PFCP) dated 11/9/2006. The applicant shall satisfy all conditions prior to recording of plat(s), or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, or as otherwise specified below.

The Final Forest Conservation Plan (FFCP) shall include the following conditions:

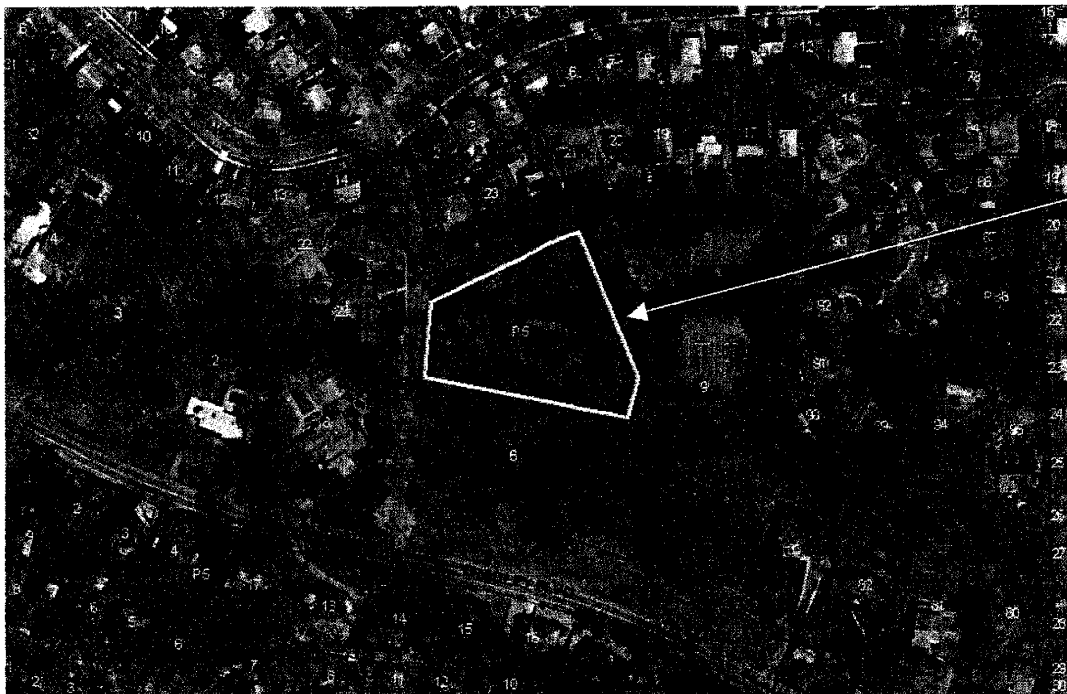
- a. Afforestation of 0.08 acres within the 100-year floodplain and adjoining land as specified on the PFCP to create a planted forest next to existing forest, to be completed no later than the first planting season following site stabilization.
  - b. Planting plan for native shrubs on steep slopes adjacent to the proposed house on lot 105.
  - c. Split rail fencing or comparable permanent equivalent along the Category I easement line that adjoins residential lots.
  - d. Permanent forest conservation signage along the Category I easement within residential lots.
  - e. MNCPPC Development Review Inspector and Urban Forester from the Parks Department, Natural Resources Division will conduct a joint pre-construction meeting to inspect trees along the limits of disturbance adjacent to MNCPPC parkland and determine if trees will need to be removed. All tree removal on adjacent MNCPPC parkland will be done at the direction of the Urban Forester and at the applicant's expense. Any trees that need to be removed, within MNCPPC property, must be replaced by the applicant at a rate up to 1" diameter at breast height per every 1" lost, as determined by the Parks Urban Forester.
  - f. The M-NCPPC Development Review Division Inspector and the Parks Department, Natural Resources Division Urban Forester will conduct a joint post-development inspection, when construction is completed to ensure that all work is in accordance with the approved plans. In the event any tree or portion, thereof, within M-NCPPC parkland is dead or dying due to construction activities, the applicant shall take such action as necessary to remove the damaged trees and to provide mitigation tree planting as directed by the Urban Forester from M-NCPPC Parks Department Natural Resources.
  - g. Tree protection fencing along the property lines shared with the MNCPPC Parks Department must follow Parks Department guidelines.
- 3) Record plat shall reflect Category I and Category II conservation easements as shown on the preliminary Forest Conservation Plan.
  - 4) The applicant shall comply with the conditions of the MCDPS stormwater management approval dated March 13, 2006, unless otherwise amended.
  - 5) The applicant shall comply with the conditions of the MCDPWT approval dated February 9, 2006, unless otherwise amended.
  - 6) Applicant to stake location of park boundary at the time of final boundary survey.
  - 7) Other necessary easements.

## II. SITE DESCRIPTION

The Subject Property ("Property" or "Subject Property") consists of four parts-of-lots totaling 1.35 acres in the R-60 zone. The Property is located in the southeastern corner of the intersection of Valley Drive and Ridge Road in the Hillmead Subdivision. The original plat for Hillmead was recorded in 1922. Many of the original lots have been resubdivided either by plat, or by deed. The Subject Property includes four parts of lots that have been created by deed.

The Property includes an existing house, built in 1935, surrounded by numerous mature trees. The site slopes from the east, to the lowest part of the site on the west along Valley Drive. The current home is built on the upland portion of the site with access to Ridge Road via a circular driveway. The Property is within the watershed of Booze Creek, a tributary to the Potomac River, and a Use I-P stream.

The M-NCPPC Hillmead Neighborhood Park abuts the Property to the south and east. Existing lots confronting the Property on Ridge Road have generally been platted at the minimum dimensional requirements allowed in the R-60 zone, while lots to the west along Bradley Boulevard and Valley Drive are larger than the minimum lot sizes permitted. Staff believes these larger lots may have originally been developed on septic systems, which typically require larger areas for septic drain fields.



Subject  
Property

### III. PROJECT DESCRIPTION

This application is a request for resubdivision of the Subject Property into 4 residential lots (Attachment A). The preliminary plan shows three lots with access to Ridge Road. Two of these lots will use portions of the existing loop driveway, while a third has its own driveway. The fourth lot will access Valley Drive with a single driveway. Public water and sewer is available to the site. The existing house will be removed. The limits of disturbance shown on the plan maximize tree protection on the Property

### IV. BACKGROUND

#### Pre-preliminary Plan

A pre-preliminary plan for the Property Subject was presented to the Planning Board in May 2005 to obtain advice on the feasibility of a resubdivision that included five lots. The Board reviewed the 5-lot plan and commented that they did not believe it was in character with the existing neighborhood. Specifically, the Board supported staff's contention that two lots fronting on Valley Drive were unacceptable, since one was generally unsuitable for residential development because of the exceptionally small rear yard. The Board also considered the relationship of the two proposed lots fronting on Valley Drive with respect to the large lots facing the Subject Property on the opposite side of Valley Drive. The Board suggested that the relationship was unacceptable and that it was not consistent with Section 50-29(a)(1), which requires lots to be of the appropriate size, shape, width and orientation with respect to their location in the subdivision. A majority of the Board members believed that one lot should be eliminated along Valley Drive to achieve a better relationship between the proposed subdivision and confronting lots on Valley Drive, and to allow greater usable yard space. The Board concluded that they did not object to submission of a 4-lot preliminary plan.

At the request of the applicant, the Planning Board also commented on sidewalk construction as part of the proposed plan and certain right-of-way requirements. Consistent with road code requirements, the Department of Public Works and Transportation (DPWT) is requiring construction of sidewalks along the frontage of the Property. The applicant pointed out that there are no sidewalks in the existing neighborhood and stated that sidewalk construction could affect existing trees. Although the Planning Board does not determine sidewalk requirements, it was the Board's opinion that sidewalks should not be required on Ridge Road and that additional road dedication would not be required.

#### Prior Hearing on the Preliminary Plan

On May 4, 2006, a 4-lot preliminary plan for the Subject Property was presented to the Planning Board. The written report prepared for the resubdivision hearing included staff's analysis of the proposed plan's compliance with the section 50-29(b)(2) resubdivision criteria, and other requirements of the Subdivision Regulations. Staff's presentation to the Board included a summary of the analysis, and a discussion concerning a previously unidentified 100-year floodplain that affected one of the proposed lots. As a result of the existence of this floodplain, staff withdrew its recommendation to approve one of the four proposed lots until

more could be learned about the floodplain. Staff recommended creating the proposed lot affected by the possible floodplain as an outlot.

The applicant and her representatives also presented their case and were in general agreement with staff's recommendations. The Planning Board also heard testimony and received evidence from several speakers, both in opposition to, and in support of, the application. Among other stated concerns, opposition speakers generally contended that the application was incomplete and failed to meet standards of the Montgomery County Code. Those speakers alleged that the review process had included deliberate efforts to evade the law and that the law had been broken<sup>1</sup>. One speaker requested that the Board conduct an independent investigation to determine in her words, "why the Development Review Division Staff has failed to apply the standards that they are experts on...and why has this become a customary practice to systematically ignore the code and break the law."

Acknowledging the serious nature of the allegations raised by opposition speakers, then Chairman Derick Berlage advised those present that no decision would be taken that day and stated his intention to refer the matter to the Commission's Office of General Counsel for an independent review. Subsequently, by a vote of 4 to 1, the Board granted the Applicant's request to defer the Board's consideration and action on the application to a future date (Commissioner Bryant voting against the motion). The Chairman noted that the application would be brought back before the Board following the conclusion of the investigation.

### Investigative Report

Consistent with the Chairman Berlage's request, the Commission's General Counsel established a separate independent ad hoc working group to conduct an internal investigation of the review process surrounding the Application for the purpose of determining whether the allegations raised by certain speakers had merit. Following its investigation, the working group issued a report, dated August 2006, ("Investigative Report"), (Attachment B). The Investigative Report, which contains several detailed findings and recommendations concerning the allegations, states that it does not make any findings concerning the merits of this Application and that the investigation focused solely on determining whether there was staff impropriety in the review of the Application.

### Revised Preliminary Plan

Following the first preliminary plan hearing, the applicant hired additional engineering and environmental consultants to further investigate environmental constraints on the site, including a full analysis of floodplain impacts on the Property. These efforts resulted in the applicant's submittal of a revised Natural Resources Inventory and Forest Stand Delineation (NRI/FSD), and the submittal of a preliminary Forest Conservation Plan replacing the former Tree Save Plan. The proposed preliminary plan lot layout remains essentially the same as that in the previously submitted plan; however, adjustments have been made to the proposed limits of

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<sup>1</sup> The attached Investigative Report, discussed below, details the major allegations raised by opposition speakers.

disturbance in response to the updated NRI/FSD. These adjustments have also resulted in change to the building area for proposed Lot 105.

This staff report includes staff's analysis and findings regarding the latest plans. The report highlights the changes reflected in the plan subsequent to the May hearing. Where staff's analysis or findings differ from those contained in staff's initial review of the application, this staff report explains the reasons for such changes in analysis or conclusion.

## **V. ANALYSIS and FINDINGS**

### **1. Master Plan Compliance**

The Bethesda-Chevy Chase Master Plan does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding zoning and land uses. The plan recommends that this area maintain existing zoning as adopted and maintain the residential land use consisting of one-family detached homes. The proposed resubdivision complies with the recommendations adopted in the master plan in that it is a request for development of one-family detached residential units.

### **2. Compliance with the Zoning Ordinance**

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of who have recommended approval of the plan.

### **3. Compliance with the Subdivision Regulations**

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections, including the requirements for resubdivision and environmental protection, as discussed below. Access and public facilities will be adequate to support the proposed lots and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

#### **Conformance with Section 50-29(b)(2)**

##### **A. Statutory Review Criteria**

This application involves the subdivision of portions of previously platted lots and it is therefore, a resubdivision. In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

## B. Neighborhood Delineation

The neighborhood proposed by the applicant for analysis purposes and delineated in Attachment C contains 12 lots (Neighborhood Delineation"). The Neighborhood is identical to that reviewed as part of the pre-preliminary plan, and staff is of the opinion that it is the appropriate neighborhood within which to compare the character of the proposed lots. The lots included in the Neighborhood confront the property, or are located generally along the same street as the Subject Property. Parts-of-lots were excluded from the Neighborhood, consistent with previous staff practice. The "Data Table" (Attachment D) illustrates the variation in lot shapes, sizes, areas, frontages, widths and alignments for the lots in the neighborhood delineation.

## C. Comparison of the Character of Proposed Lots to Existing

In performing the analysis, the above-noted resubdivision criteria were applied to the Neighborhood. The proposed lots are of the same character with respect to the resubdivision criteria as other lots within the defined neighborhood. Therefore, the proposed resubdivision complies with the criteria of Section 50-2(b)(2). As set forth below, the attached tabular summary and graphical documentation support this conclusion:

**Area (buildable):** The lot areas for the lots in the Neighborhood range from 2,280 square feet to 14,775 square feet. The respective areas of the proposed lots range from 3,896 square feet to 9,113 square feet. The lot areas have been revised from the original submission to account for the addition of easements within all four lots. Three of the four proposed lots remain larger than the majority of the existing Neighborhood lots. Proposed Lot 105 has the smallest buildable area of the four proposed lots, at 3,896 square feet. The buildable area of Lot 105 excludes the zoning setbacks, the floodplain and the easements protecting the steep slopes on the lot. The area on Lot 105 remains one of the largest in the neighborhood. The depth of the Subject Property results in very deep rectangular lots, which have larger buildable areas. While all of the proposed lots are larger in area than the majority of existing lots, they do fall within the overall range for the neighborhood. In fact, the proposed lots are more in character with the Neighborhood than the one existing lot. **The lots are of the same character with respect to area as compared to the existing lots.**

**Size:** The existing lots in the Neighborhood range in total size from 6,227 square feet to 22,506 square feet. The proposed lots range from 12,646 square feet to 16,380 square feet. Similar to the discussion above regarding area, size follows the same logic in that the depth of the Subject Property results in deep, rectangular lots that are necessarily larger than the majority of lots in the Neighborhood; however, they are in the middle of

the range. Their location, between the larger lots to the west, the smaller lots to the north and the park to the south and east, provides an appropriate transition in lot size. Therefore, **the proposed lots are the same character with regard to size as those existing in the neighborhood.**

**Alignment:** Lot alignments in the Neighborhood range from radial, to perpendicular, to corner lots. The proposed lots provide three perpendicularly aligned lots and one corner lot. **The alignments of the proposed lots are of the same character as the lots in the Neighborhood.**

**Lot Frontage:** Lots in the Neighborhood have frontages that range from 62 feet to 130 feet. Three of the proposed lots have frontages of 63 feet, very similar to the majority of lots in the Neighborhood. Lot 105 is a corner lot with 100 feet of frontage on Valley Drive and 45 feet along Ridge Road; the two confronting lots on Valley Drive have frontages of 105 and 130 feet. **Based on this analysis the lots are of the same character as the lots in the Neighborhood with respect to frontage.**

**Shape:** The Neighborhood has a variation in lot shapes, including rectangular, irregular and pie shapes. Three of the four proposed lots will be rectangular/irregularly shaped. The fourth lot will be irregular in shape. **The shapes are of the same character as the existing lots in the Neighborhood.**

**Width (at the front setback):** The Neighborhood consists of lots that range in width at the building line from 62 ft. to 130 ft. The proposed lots range from 63 ft. to 133 ft. Although the corner lot has the widest width in the Neighborhood, it compares very favorably with the lot immediately across the street (Lot 23) with respect to width. A discussion of width at the pre-preliminary plan hearing did focus on the relationship of the lots across the street on Valley Drive. The Applicant's pre-preliminary plan had proposed two lots with frontage on Valley Drive. Staff noted that this was out of character and based their objection to the plan partly on the width issue. The Board agreed with the staff's analysis by recommending elimination of one lots. This proposal addresses those concerns. **The proposed lots are of the same character with respect to width.**

**Suitability for Residential Use:** Although a portion of proposed Lot 105 is encumbered by floodplain and steep slopes, neither render the lot unsuitable for residential development. The analysis of lot suitability in the previous staff report did not include consideration of floodplain and steep slopes. A floodplain was not identified by the Montgomery County Department of Permitting Services (DPS) during their initial review of the preliminary plan application. The FEMA floodplain, and its associated 25-foot building restriction area, will not be disturbed by development on proposed Lot 105. For a detailed discussion of floodplains refer to Section 4A (a), below.

Steep slopes, while shown on the original preliminary plan drawing, were not specifically addressed. The steep slopes on the Subject Property are not associated with a perennial or intermittent stream and; therefore, may be constructed upon using



appropriate sediment control measures without causing environmental harm. Overall short term and long term impact to the steep slopes can be minimized, and the proposed usable area can accommodate a house of modern size and scale. For a detailed discussion of steep slopes, refer to Section 4B(b), below. **The proposed lots are suitable for residential development.**

#### **4. Environment**

##### **A. Revised NRI/FSD (Attachment E)**

The Applicant revised the previously approved NRI/FSD following the first preliminary plan hearing in response to issues raised concerning floodplain, tree identification, steep slopes and forest conservation requirements. Each revision is discussed below.

##### **(a) Floodplain delineation**

As staff advised the Board during the May 4, 2006 hearing, the previous NRI/FSD did not identify the presence of a Federal Emergency Management Agency (FEMA) floodplain. As noted above, the Montgomery County Department of Permitting Services (DPS) had not requested a floodplain study of the applicant based on DPS staff's belief that the drainage area coming to the Property was less than the minimum that would generate enough flow to produce a 100-year flood situation. Commission staff analyzed the Application based on this finding. However, after finalization of the staff report, citizens pointed out to DPS that the local area FEMA map, circa 1984, did in fact show a floodplain crossing the southernmost lot (Lot 105) on the 4-lot plan, and MCDPS staff contacted Development Review and Environmental Planning staff and acknowledged the oversight. What was not known at that time was whether the floodplain map was still valid, and if so, how much the floodplain would impact the Subject Property.

After the May 4 hearing, the applicant applied for a Letter of Map Amendment (LOMA) in order to: 1) confirm the existence of a floodplain, and 2) if a floodplain exist, delineate its precise boundary on the Subject Property using detailed topography. FEMA confirmed that a floodplain does exist. The applicant provided a detailed delineation of the floodplain to FEMA for review, and it was subsequently approved. DPS concurs with the FEMA delineation as documented in a letter dated August 24, 2006 (Attachment F). The revised NRI/FSD includes this approved floodplain delineation, with an associated 25' building restriction line. The FEMA map is also attached to this report.

##### **(b) Large and specimen trees**

There are 11 specimen and 20 other significant trees on the Subject Property. The opposition's arborist questioned the accuracy of the original NRI/FSD regarding: tree location and omissions, species type, tree health, survivability and tree numbering. The revised NRI/FSD now reflects sizes and locations that have all been field checked. The listed sizes of the trees on the revised NRI/FSD are not markedly different from those noted on the original NRI/FSD; most of the changes are less than 2" diameter at breast height (DBH) difference. The condition of each tree has been assessed using the Guide for Plant Appraisal, ninth edition, published by the

International Society of Arborists, (2000). Most of the trees are in fair condition per the latter publication's rating scale. Species have also been checked and corrected as necessary.

Staff had previously counted 33 large and/or specimen trees on the Property that included six trees in the right-of-way. The applicant's NRI/FSD excludes the six trees in the right-of-way and includes four trees previously omitted from the plan.

(c) On-site forest delineation

The previously approved NRI/FSD showed no forest on the Property, and the application was granted an exemption from the Forest Conservation Law requirements. Since the original review, Environmental Planning staff has revised its methods for classifying forest and the criteria related to the overall implementation of the County Forest Conservation Law. As part of this effort, they evaluated several properties, including the Subject Property, to clearly develop criteria for distinguishing between forest cover and tree cover in urban areas. After re-examining the site using the alternative criteria that resulted from this effort, staff determined that 0.06-acre (2,614 square feet) would qualify as forest cover and requested that the Applicant revise its submission to include a preliminary forest conservation plan (Attachment G). This determination was made, in part, due to the fact that the understory vegetation in this area of the Property had not been sufficiently altered by human activity to characterize it as non-forest. It should be noted that this area, on its own, is not large enough to meet the size criteria of forest as defined by the County Forest Conservation Law (at least 10,000 s.f. in size), however, it is contiguous to a larger forest in the adjacent Park.

B. Environmental Guidelines

(a) Stream and wetlands

Staff continues to find that there are no existing streams or wetlands on the Subject Property, or within the adjacent parkland. Staff investigated the possibility that remnant hydrology exists on adjoining parkland after the installation of the storm drain system in the road network upstream of the subject site. There is an ephemeral<sup>2</sup> channel running across the Property in the approximate location of the historic streambed, however, soil samples taken from this channel show no evidence of hydrology, such as gleyed or oxidized soils, either at the surface or at probe-depth. There are also no geomorphic indicators of a stream, such as substrate sorting or recent alluvial deposits.

Contrary to assertions made at the May 4 hearing, staff concluded that no wetlands exist on the Subject Property. There are also no wetlands on the adjacent park property or in the vicinity of the drainage channel. This was determined by analyzing the parameters of: 1) soils, 2) hydrology, and, 3) plants in the area, as required by the "Corps of Engineers Wetlands

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<sup>2</sup> Flowing only in direct response to rainfall (Env. Guidelines Pg. 55)

Delineation Manual”<sup>3</sup>. None of the three parameters indicating the presence of wetlands are found on the site.

(b) Steep slopes

The previous staff report suggested that slopes on the site approach 24%. When slopes are measured across the width of Lot 105, where the proposed house would be located, this is a correct statement. However, as reflected on the original and revised plans, the proposed lot also contains areas of 25% or greater slopes, and some 15% slopes on erodible soils that will continue to be impacted by a house on that lot. The initial review did not include an analysis of the impact to the steep slopes under Section 50-32(c), *Environmentally Sensitive Areas*. The Environmental Guidelines distinguish between hydraulically adjacent and hydraulically remote steep slopes, and specifies that development should be avoided on hydraulically adjacent slopes. For the reasons discussed above, Staff has determined that the adjacent channel is ephemeral. Therefore, the steep slopes on the site and adjoining parkland are not adjacent to a perennial or intermittent stream and are considered hydraulically remote. Further, staff has in practice consistently classified steep slopes as being hydraulically remote when they are not integral to or abutting a stream buffer.

Although the Environmental Guidelines state a preference that hydraulically remote slopes remain undisturbed, the Code limits the Board’s discretion to delete proposed lots on steep slopes where an applicant provides adequate short and long term natural resource protection. The Environmental Guidelines do not require the inclusion of hydraulically remote steep slopes in stream valley buffers, and as shown in the passage below, the Guidelines anticipate that development may occur on such slopes under certain circumstances.

“To the extent possible, hydraulically remote steep slopes should be incorporated into the site’s open space and/or remain undisturbed. However, development of these areas may be approved on a case-by-case basis, where the developer can demonstrate that safety, County road standards, storm drainage/stormwater management, erosion and sediment control, engineering, tree preservation, soil stabilization, design, and planning issues are satisfactorily addressed.”  
(Environmental Guidelines Pg. 20)

In relevant part Section 50-32(c) of the Subdivision Regulations states that:

“the Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources, and to protect environmentally-sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to ... slopes over 25%, or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers.”

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<sup>3</sup> The 1987 federal manual is the document that defines the procedures for determining whether an area is a non-tidal wetland. The procedures in this document are accepted by Federal, State, and local regulatory agencies to define non-tidal wetlands in the geographic region that includes Montgomery County.

Section 50-32(d)(1) sets forth the restrictions on development that the Board may impose in order to protect environmentally sensitive areas such as steep slopes, "In addition to any requirements imposed under chapter 22A, such development restriction include:

- a. deletion or rearrangement of proposed lots, road, utilities , and other facilities;
- b. establishment of building restriction lines and land disturbance limit lines, and other protective measures or conditions;
- c. requiring conservation easements, deed restrictions, or covenants over portions of lots or parcels to be recorded."

However, the Subdivision Regulations limit the ability of the Board to delete lots on the grounds that they are located on environmentally sensitive areas such as steep slopes. Section 50-32(d)(2) provides that:

"The deletion of proposed lots under subsection (c), should occur only if the Board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long term natural resource protection or to satisfy the requirements of Chapter 22A."

For reasons set forth below, staff concludes the mitigation measures proposed will provide reasonably appropriate short and long term natural resource protection. The proposed development will disturb approximately 5,200 s.f. of the steep slopes on the Property. The applicant will minimize the impacts on these slopes by applying the following measures:

- a. Minimizing the area of slope disturbed through placement of houses;
- b. Minimizing grading of steep slopes by using retaining walls instead of flattening the slope;
- c. Using specially designed stormwater management devices (Rainhandlers) to disperse runoff from rooftop on Lots 104 and 105;
- d. Minimizing imperviousness by using porous paving in the proposed driveways;
- e. Submitting an engineered sediment control plan (at time of building permit) to ensure stability during construction;
- f. Permanently stabilizing 0.02 acres of steep slope by planting forest;
- g. Permanently protecting 0.11 acres of steep slope in conservation easements.

Staff's recommended conditions require the above protective measures. Staff has determined that application of these measures will provide appropriate short and long-term natural resource protection pursuant to the Section 50-32(d)(2) requirements. With regard to stormwater and sediment control requirements, DPS is the lead agency. DPS has approved a SWM concept for the proposed subdivision that specifically took into account the steep slopes on this Property by requiring the use of Rainhandlers and minimizing imperviousness. The stormwater management concept includes no waivers for this preliminary plan. DPS must also approve an engineered sediment control plan that will be applied to the site during construction. Although some steep slopes will be destabilized during construction, it is staff's judgment that

erosion can be controlled in the short-term with appropriate sediment control measures, and, as stated above, the proposed measures will ensure the long-term stability of the slopes.

### (c) Environmental Buffers

As provided in the Environmental Guidelines, an **environmental** buffer includes floodplain, and the buffers associated with intermittent and perennial streams and wetlands. As previously mentioned, the Property does not include a stream, but the confirmed FEMA 100-year floodplain covers part of the adjacent parkland and extends somewhat onto the subject site. Consistent with the Guidelines, the floodplain limit and the environmental buffer for this site are one in the same. If an intermittent or perennial stream were associated with this floodplain, the overall environmental buffer would be extended to include adjacent steep slopes. However, as discussed above, staff continues to find that the drainage channel on the adjacent parkland is neither an intermittent or perennial stream; the channel is ephemeral. The Environmental Guidelines state, "Ephemeral streams do not require a stream buffer, but they should be protected as much as possible through plan layout and conditions on a voluntary basis." Consistent with the Environmental Guidelines, there is no **stream** buffer that is associated with the drainage channel and, therefore; the environmental buffer over the floodplain need not be extended to include the nearby steep slopes.

### C. Forest Conservation and Tree Save

#### *Forest Conservation Law*

In its initial review, staff had determined that the applicant was not required to submit a forest conservation plan. Based on that information, staff determined that the proposed project qualified for a forest conservation plan exemption under the small property provisions. The Property is 1.35 acres in size, and staff determined that that there was no forest on the site.

As discussed in Section 4A(c), staff has revised its methodology for classifying forest. Based on the new methods, staff has determined that some forest exists on the site so the site no longer qualifies for an exemption from the requirements to submit a forest conservation plan. Therefore, the applicant has prepared and submitted a preliminary forest conservation plan, which has been reviewed by staff. The FCP worksheet shows that 0.14 acres of afforestation are required. The applicant proposes to protect the onsite existing forest in a Category I conservation easement (0.06 acre). In addition, the applicant proposes to plant within the onsite floodplain and on part of the steep slopes to create a 0.08 acre specialized forest planting area that is connected to the existing forest. Finally, the applicant proposes to create a 0.07 acre Category II conservation easement along the back of the Property to create a landscaped area of existing and planted native trees as a transition area between the existing forest in parkland and the residential units.

Staff finds that the 0.08-acre of forest planting area and the 0.07 acre of landscaped area satisfy the required 0.14-acres of required afforestation. In staff's opinion, 0.08 acre of forest planting is the appropriate amount of afforestation for this site. The afforestation is on a part of

the site that should be converted into a natural area because of the presence of a floodplain and its adjacency to the onsite and offsite forest.

The Forest Conservation Regulations (Section 108(G)(1)) state that, “the Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.” The regulations also state (Section 108(G)(3)) that:

“Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:

- (i) developments in urban areas;
- (ii) redevelopments;
- (iii) high density residential developments;
- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.”

Staff finds that the proposed landscaped area is acceptable as tree cover area can be counted toward the site’s afforestation requirement. The proposed site is zoned R-60, which is considered to be high-density residential land use. The plan proposes to maintain this landscaped area as part of the backyards of the new lots. Staff recommends additional native tree planting in the proposed Category II conservation easement to create a complete tree canopy cover within the easement area.

#### D. Tree Save Issues

Of the 11 specimen trees on the Subject Property, 4 will be saved, 6 will be removed, and 1 may be retained although its critical root zone (CRZ) is greatly impacted. The plan also retains 9 large trees, removes 4, and attempts to save 4 others that will be impacted. The 13 trees that staff believes will be saved, have more than 2/3 of their critical root zones (CRZ’s) preserved through restriction of the limits of disturbance (LOD). The tree save plan was prepared and signed by a certified arborist who believes the five questionable trees can be protected by the suggested tree protection measures. The final retention decisions will be made based on more detailed onsite evaluations.

One large tree and one specimen tree will be placed in a Category II conservation easement to permanently protect them. One large tree will be protected in a Category I conservation easement. Other trees identified on the tree save plan will only be protected during construction of the site. The trees will not be included within the proposed conservation easements; therefore, future homeowners will ultimately determine whether they are removed. Staff believes that some amount of usable area behind a residential unit (as a staff practice, at least an area equal to the rear yard setback) should be made available for uses determined by the homeowner. Therefore, permanent protection of most trees is not being recommended.

This Property is bordered on two sides by Hillmead Local Park and the LOD for Lot 102 is on the shared property line. There is only one large or specimen tree on MNCPPC property that is likely to be affected by this development – a 33” Tulip Poplar. However, there are potentially other, smaller trees that may also be affected. These trees are important because they perform an essential role in providing screening. Staff recommends that decisions about tree retention on MNCPPC property be left to the Development Review Inspector and Urban Forester from the Natural Resources Division at the pre-construction meeting. As the loss of these trees may reduce the screening between the properties, staff recommends that the applicant plant replacement trees at the direction of the Urban Forester from the Natural Resources Division. Staff recommends that the determinations about quantity and species for replacement be left until the pre-construction meeting but replacement rates will not be more than 1” DBH for every 1” DBH lost. In addition, any trees on MNCPPC property that need to be removed due to this development should be removed at the applicants expense and the Urban Forester’s direction.

#### Conformance with Section 50-32

Section 50-32 of the Subdivision Regulations contains provisions for “Special controls for environmentally sensitive areas.” Under this section the Planning Board has the authority to limit or restrict the subdivision of land to protect certain environmentally sensitive and unsafe lands. The section states:

##### 50-32 - Special controls for environmentally sensitive areas.

(a) Stream valleys and floodplains: The Board must, when it deems necessary for the health safety and welfare of present and future population of the regional district and necessary to the conservation of water, drainage and sanitary facilities, restrict subdivision for development of any property which lies in the 100-year floodplain of any stream/drainage course....

While the preliminary plan does not contain a stream within the site or adjacent to the site, there is a mapped floodplain area, which is discussed in detail above. Appropriate setbacks have been established to restrict house locations or disturbance to the floodplain boundaries and its setback.

(b) Unsafe Land: The Board must restrict subdivision of land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.

No lands have been deemed unsafe for development. The potential that this subdivision will cause flooding or erode stream channels is addressed by requirements for sediment and erosion controls and stormwater management. The soils located on the Property are not indicative of any problem-soils related to structural or unstable conditions.

(c) Trees, Forest and Environmentally Sensitive Areas: The Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to the conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species and to slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals.

(d) The Planning Board has the authority to delete lots, and to rearrange lots, road utilities and other facilities to protect these features. The Board may also establish building line restrictions and disturbance limits and other protective measures. Conservation easements, deed restrictions and or covenants over portions of lots and parcels may also be recorded. This Section does note that deletion of a lot(s) under this section should occur only if the Board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long term natural resource protection or to satisfy the requirements of Chapter 22A.

The staff review considered the potential for environmentally sensitive areas on the site. The site contains no critical habitats or rare, threatened or endangered species (RTE's) but does contain a number of specimen and large trees. House locations were shifted to preserve a greater number of trees. The revised and approved NRI/FSD identifies slopes in excess of 25% and also slopes exceeding 15% with erodible soils. These slopes are not adjacent to a stream system and have been defined as hydraulically remote. A proposed house is to be located on the steep slopes. As discussed in Section 4B(b), development measures required of the applicant can address the short and long term protection of these slopes as discussed above.

## **5. Transportation**

### LATR

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review.

## **6. Park Acquisition**

Park Planning and Resource Analysis staff has evaluated the site as a possible addition to Hillmead Neighborhood Park, located adjacent to the subdivision. The existing park already has active recreation facilities including a playground, tennis and basketball courts, and a large natural area with a well-maintained nature trail. The recently approved 2005 Land Preservation, Park and Recreation Plan does indicate a need for new rectangular soccer/lacrosse fields in the area, however, this site is too small and limited topographically to accommodate such large playing fields (including parking). It would be difficult; therefore, to justify expenditures for



additional land acquisition at this site when there are many other needs to be met throughout the lower County area.<sup>4</sup>

### Legacy Open Space (LOS)

The Property at 6221 Bradley Boulevard was officially nominated by Sue Ghosh Stricklett, a resident of Bethesda, Maryland, and an opponent to the instant application, as a potential LOS site. Legacy Open Space staff conducted a field review for the Property in April of 2006. Staff determined that the site does not meet an acceptable level of criteria under any of the six categories for LOS designation (Protection of Environmentally Sensitive Resources, Protection of Water Supply, Conservation of Heritage Resources, Protection of Greenway Connections, Protection of Farmland and Rural Open Space, Protection of Urban Spaces). Staff's evaluation is reflected in Attachment H.

### **Citizen Correspondence**

Staff received a significant number of letters, emails, and phone calls prior to the first public hearing. Certain individuals in the neighborhood support County acquisition of the Subject Property to add to the existing Hillmead Park and oppose the subdivision because of loss of trees, additional runoff and changes to community character. There has also been a request to place the property in the Legacy Open Space Program (LOS) as previously discussed. The site has been evaluated for both Park acquisition and as a LOS, however, after a complete analysis, staff concluded that it did not meet the threshold for acquisition.

Staff received an email dated April 21, 2006, from the Hillmead Citizen's Association. The email makes the following statement: "The Hillmead Citizen's Association is not involved in any way with any party for or against the development plans of the Piotrow property on Bradley Blvd in Bethesda Maryland. The Hillmead Citizens Association hereby disassociates itself from any past involvement (implied or real), public or private involving this property." Other citizens have responded in support of the 4-lot subdivision.

The findings of the Investigative Report prompted a response by "Friends of Hillmead Park". The issues they raised pertinent to the factual matters of this application involve complaints that a forest conservation exemption was given, and a 100-year floodplain was not identified, their belief that an intermittent stream exists, their opposition to development on steep slopes, and a perceived lack of stormwater management (Attachment I). The substantive issues raised in this letter have been addressed in the Analysis section of this staff report.

As previously discussed, the Property is subject to the Forest Conservation Law by virtue of the fact that 0.06 acres Subject Property has now been classified as forest. A preliminary forest conservation plan has been approved and the forest conservation requirements are being

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<sup>4</sup> At the May 4 hearing, one of the individuals in opposition testified that a Park staff person from Hillmead Local Park agreed with their concerns about this development. By email of April 26, 2006 by Mr. Ronnie Gathers, Superintendent, stated that the Park employee's views do not represent the views of the "Region"

met on-site. The applicant has confirmed the existence of a 100 year floodplain and has worked with FEMA and MCDPS to delineate its exact boundary on the plan. The floodplain is protected by an environmental buffer. Staff continues to find that there is no intermittent or perennial stream on, or adjacent to, the Subject Property; therefore, no stream valley buffers are warranted. Development will disturb a portion of the steep slopes on the Property, however; these steep slopes are hydraulically remote and will be protected to the greatest extent possible before and after construction. This memo outlines the measures that will be taken to accomplish development in an environmentally responsible manner. Stormwater management will be required for each lot; no waivers are provided for this project.

## **CONCLUSION:**

The previous staff review of this application was deficient in its analysis of the development's impact to, and the protection of, steep slopes. The previous review also failed to document the existence of a FEMA floodplain affecting one of the proposed lots. In addition, since the previous review, staff has revised its methodology on the classification of forest, and as such, believes that an area of forest does exist on the property and that it is not exempt from the requirement to submit a forest conservation plan. This staff report documents the previous deficiencies, how this plan addresses those issues, and how this plan complies with the requirements of the Subdivision Regulations, Zoning Ordinance and local area master plan. The applicant has also documented how the current plan addresses all of the issues raised (Attachment J).

Section 50-29 (b) (2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. These criteria are: street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As discussed in this report, staff is of the opinion that the proposed application complies with all seven criteria.

The proposed plan complies with other requirements of Chapter 50, the Subdivision Regulations, including 50-32, which addresses protection of streams, floodplains, unsafe lands and environmentally sensitive areas. The plan complies with Chapter 59, the Zoning Ordinance as summarized in attached Table 1. The plan is also consistent with the recommendations of the Bethesda-Chevy Chase Master Plan. The plan has been recommended for approval by all agencies involved with the review of regulatory plans. Therefore, Staff recommends approval of the proposed application.

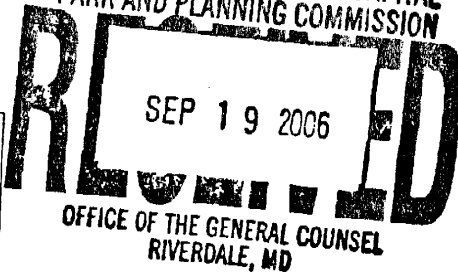
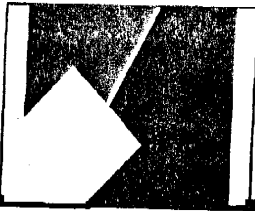
## **Attachments**

Attachment A: Proposed Development Plan	(Circle pg. 1)
Attachment B: Investigative Report	(Circle pg. 2-19)
Attachment C: Neighborhood Delineation	(Circle pg. 20)
Attachment D: Resubdivision Table	(Circle pg. 21)
Attachment E: Revised NRI/FSD	(Circle pg. 22)
Attachment F: Forest Conservation Plan	(Circle pg. 23)
Attachment G: DPS/FEMA LOMA Letter	(Circle pg. 24-28)
Attachment H: LOS Matrix	(Circle pg. 28A)
Attachment I: Friends of Hillmead Letter	(Circle pg. 29-35)
Attachment J: October 3, Applicant letter	(Circle pg. 36-41)
Attachment K: Agency Approval	(Circle pg. 42-48)
Attachment L: Recent Correspondence	(Circle pg. 49)

**Table 1. Preliminary Plan Data Table and Checklist**

<b>Plan Name: Hillmead/Bradley Hills</b>				
<b>Plan Number: 120060480</b>				
<b>Zoning: R-60</b>				
<b># of Lots: 4</b>				
<b># of Outlots: 0</b>				
<b>Dev. Type: One-family detached residential</b>				
<b>PLAN DATA</b>	<b>Zoning Ordinance Development Standard</b>	<b>Proposed for Approval on the Preliminary Plan</b>	<b>Verified</b>	<b>Date</b>
Minimum Lot Size	6,000 s.f.	12,380 s.f. is minimum proposed	RW	11/17/06
Lot Width	60 ft.	Must meet minimum	RW	11/17/06
Lot Frontage	25 ft.	Must meet minimum	RW	11/17/06
Setbacks				11/17/06
Front	25 ft. Min.	Must meet minimum	RW	11/17/06
Side	8 ft. Min./ 18 ft. total	Must meet minimum	RW	11/17/06
Rear	20 ft. Min.	Must meet minimum	RW	11/17/06
Height	35 ft. Max.	May not exceed maximum	RW	11/17/06
Max Resid'l d.u. per Zoning	9 dwelling units	4 dwelling units	RW	11/17/06
MPDUs	N/A			
TDR's	N/A			
Site Plan Req'd?	No			
<b>FINDINGS</b>				
<b>SUBDIVISION</b>				
Lot frontage on Public Street	Yes	Yes, as shown	RW	4/21/06
Road dedication and frontage improvements	None		RW	4/21/06
Environmental Guidelines	Yes	Yes	Staff memo	11/9/06
Forest Conservation	Yes	Yes	Staff memo	11/9/06
Master Plan Compliance	Yes	Yes		11/17/06
Other				
<b>ADEQUATE PUBLIC FACILITIES</b>				
Stormwater Management	Yes	Yes	Agency Letter	3/13/06
Water and Sewer (WSSC)	Yes	Yes	Agency memo	11/21/06
10-yr Water and Sewer Plan Compliance	Yes	W-1/S-1		4/21/06
Well and Septic	N/A			
Local Area Traffic Review	N/A			
Fire and Rescue	Yes	Yes	Agency memo	2/24/06





# MEMO

## THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

September 18, 2006

To: Montgomery County Planning Board

From: Robert J. Hickey, Internal Audit Manager *RJH*  
Lisa L. Jackson, Associate General Counsel *LJ*

Subject: Investigative Report Montgomery County Department Of Planning  
Hillmead/Bradley Hills Re-subdivision Case #120060480

During the public hearing regarding the above case, a group of citizens and activists raised serious allegations that, among other things, Commission staff engaged in illegal and improper behavior in conducting its review of the subject application. Based on the seriousness of the allegations and the determination that the evidence as presented by the citizens made a compelling case for immediate and thorough investigation, the former Planning Board Chairman directed the General Counsel to take the steps necessary to conduct an investigation into the allegations made by the citizens.

Based upon the Chairman's request, the General Counsel established a separate independent ad hoc working group consisting of the Internal Audit Manager and an Associate General Counsel to conduct an internal investigation into the allegations. Organizationally, both of staff members report to the Commission's Bi-County Executive Committee as opposed to the Montgomery County Planning Board, thereby providing the necessary independence from the Montgomery County Department of Planning.

Our investigation found that while most of the allegations contain factual information, when these facts are placed in the overall development review context, there is no evidence that there has been a deliberate effort to evade the law or break the law by any M-NCPPC staff member. Moreover, we conclude that a number of the inadequacies in the development review process that the citizens encountered have been previously identified in a recent management-commissioned independent study as systemic problems that need to be improved.

Attached is a copy of the report addressing the detailed allegations and our findings regarding those allegations for your review. In addition to supporting the recommendations outlined in the management-commissioned independent study, we have made additional recommendations where appropriate.

cc: Trudye Morgan Johnson, Patricia Colihan Barney, Adrian R. Gardner, Faroll Hammer

# THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

## Investigative Report

of the

Montgomery County Department of Planning  
Administration and Compliance with Montgomery County Development  
Law and Policy

August 2006

### BACKGROUND

On February 25, 2005, Phyllis T. Plotrow (the "Applicant")<sup>1</sup> filed pre-preliminary plan application number 7-05051 with the Development Review Division for the resubdivision of a 1.3476-acre tract of land in the Hillmead/Bradley Hills subdivision (the "Subject Property"). The Subject Property abuts M-NCPPC-owned Hillmead Neighborhood Park. The Application proposed the resubdivision of the parcel into five (5) lots. Following a hearing on May 12, 2005, and in a non-binding decision, the Montgomery County Planning Board ("Board") approved up to four (4) lots on the Subject Property. On or around October 14, 2005, the Applicant submitted preliminary plan application number 120060480 for the Subject Property for four (4) lots. As provided for in the Montgomery County Code, the Applicant, prior to submission of the pre-preliminary plan, requested and obtained from the Commission's Environmental Planning Division an exemption from the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law) based on the "small property" exemption. The Environmental Planning Division required the Applicant to submit a detailed tree save plan at the time of submission of the preliminary plan. On May 4, 2006, the Board held a public hearing on the subject application.

During the public hearing, a group of citizens and activists (hereinafter the "citizens") raised serious allegations that, among other things, Commission staff engaged in illegal and improper behavior in conducting its review of the subject application. The seriousness of the allegations was bolstered when the citizens presented compelling evidence that part of the Subject Property lies in a floodplain that neither Commission staff nor the appropriate County staff identified during the application review process. Based on the seriousness of the allegations and the determination that the evidence as presented by the citizens made a compelling case for immediate and thorough investigation, the former Planning Board Chairman directed the General Counsel to take the steps necessary to conduct an investigation into the allegations made by the citizens.

Based upon the Chairman's request, the General Counsel established a separate independent ad hoc working group to conduct an internal investigation of the review process surrounding the subject application to determine if there is any substance to the citizens' allegations. It is important to note that both the investigation that followed as well as this Investigative Report were conducted and written entirely independent of the management and direction of both the Montgomery County Department of Planning and the Office of the General Counsel.

<sup>1</sup> Throughout this report, the term "Applicant" is intended to include all agents of the Applicant, unless otherwise specifically noted.

## SUMMARY OF ALLEGATIONS

Based on two (2) interviews with the citizens and a comprehensive review of the transcript of the public hearing and all pertinent documents in the public record, a summary of the citizen's major allegations can be classified as follows:

- The Application does not meet many of the approval standards of the Montgomery County Code and contains misleading information. There has been a deliberate effort to evade and even to break the law as evidenced by the fact that:
  - The Subject Property is a "forest" and staff improperly exempted the property from certain requirements of the County Forest Conservation Law embodied in Chapter 22A of the Code. The subject property has a watercourse or drainage and no wetland permit is being required in contravention of the requirements of the Code.
  - There is land-disturbing activity on the property and no storm drain permit is being required in contravention of the requirements of the Code.
  - There is a floodplain on the subject property and no floodplain district permit is being required in contravention of the requirements of the Code.
- Staff intentionally underreported the steepness of the slope on the property at 24% in order to keep it under the 25% land-disturbing activity threshold in the Code that triggers greater environmental protection.
- Staff was pressured to change its opinion regarding whether a forest existed on the property and the suitability of building on the property's slopes.
- The Applicant's land planner cut and pasted the signature of the Applicant's arborist without her knowledge and staff was negligent in not questioning the authenticity of certain documents.
- There has been a deliberate attempt by the Applicant to falsify documents.

## SUMMARY OF INVESTIGATIVE CONCLUSION

Our investigation found that while most of the allegations contain factual information, when these facts are placed in the overall development review context, there is no evidence that there has been a deliberate effort to evade the law or break the law by any M-NCPPC staff. Moreover, we conclude that a number of the inadequacies in the development review process that the citizens encountered have been previously identified in a recent management-commissioned independent study as systemic problems that need to be improved. The report, entitled the "Development Review Improvement Project Report" dated June 2006 was prepared by Management Partners, Inc. (hereinafter the "Management Partners Report"). A number of these inadequacies were also outlined in Office of Legislative Oversight report number 2006-3 entitled "Fact-Finding Review of the Clarksburg Town Center Project" dated November 8, 2005 (hereinafter the "OLO Report").

Our investigation concluded that although these inadequacies undoubtedly undermine the integrity of and citizen confidence in the development review process, we are aware that many of the systemic problems the citizens encountered are in the process of being revised and improved by management.<sup>2</sup> Essentially, the review of the Hillmead/Bradley Hills resubdivision application represents a microcosm of some of the previously identified problems with the development review process and can and should be used as an instructive tool by management to continue making much needed changes to the process. In addition to supporting the recommendations

<sup>2</sup> Letter dated July 17, 2006 from Derick P. Berlage to The Honorable George Leventhal regarding Commission progress in implementing management reforms to the development review process.



outlined in the Management Partners and OLO reports, we make additional recommendations for improvements to the development review process where appropriate.

It is important for us to note that, since this investigation is taking place in the context of a pending case, we have been extraordinarily careful not to make any findings with regard to the merits of the application. Essentially, our investigation focused on determining whether there was staff impropriety in the development review process. Thus, the findings, recommendations and any information herein should not in any way be taken as commentary on whether the application should or should not be approved.

#### SCOPE OF INVESTIGATION:

Based on review of the transcript of the public hearing on Case No. 120060480 and two interviews with the citizens, the scope of the investigation as interpreted by the interview team and confirmed by the citizens was to review the Hillmead/Bradley Hills re-subdivision facts and circumstances and determine:

- 1) Why staff determined that the property should be exempt from the Forest Conservation requirements of the Montgomery County Code;
- 2) Why staff determined that the Applicant was not required to submit sediment control, wetland and floodplain permits;
- 3) Did staff use due diligence in generally determining what development requirements are required for approval of the proposed project;
- 4) Did staff use due diligence in reviewing a potentially inconsistent series of drawings and plans for the proposed project submitted by the Applicant;
- 5) Why didn't staff question the authenticity of certain documents that were submitted and whether the documents should have been accepted for filing;
- 6) Whether staff improperly kept certain documents that were submitted by opponents of the property out of the public record; and
- 7) Whether staff interacted with the citizens and the Applicant in an appropriate manner.

As part of our scope methodology we reviewed the following documents: the Montgomery County Code, the Fact-Finding Review of the Clarksburg Town Center Project- Office of Legislative Oversight Report Number 2006-3; Department of Park and Planning -Trees: Approved Technical Manual; Department of Park and Planning Environmental Guidelines; and Development Review Improvement Project Report prepared by Management Partners, Inc. dated June 2006.

#### LIST OF ATTACHMENTS

##### List of Interviewees

Investigation Scope letter to Ms. Sue Ghosh-Stricklett and Ms. Harriett Lurensky Kuhn  
Vicinity Map

## FINDINGS OF INVESTIGATION

In order to address the allegations in the most logical manner possible, rather than organizing the report according to the scope of the investigation, the allegations have been grouped according to the follow major issue areas: I.) Forest Conservation Requirements; II.) Adequacy of Plans and Drawings; III.) Adequacy of Public Notice Relating to Review of Plan; IV.) Required Permits; V.) Undue Staff Influence; VI.) Accuracy of Staff Report and VII.) Improper Interaction Between Staff and the Applicant.

### I. Forest Conservation Plan Exemption

**SUMMARY OF ALLEGATION:** The citizens at the public hearing and during the interviews with the interview team stated their belief that the subject property should not have been exempted from the requirement to submit detailed Forest Stand Delineation and Forest Conservation Plans (FSD/FCP). During the public hearing, one citizen testified her belief that field notes on the original Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) indicate that staff felt there was forest<sup>3</sup> on the property or staff would not have asked the Applicant to extend the forest cover on the Plan more into the property. Therefore, according to the citizen, since the property had "forest" and specimen trees, no exemption should have been issued and staff must have been pressured to grant an exemption.

**SUMMARY OF APPLICABLE LAW:** In order to determine whether the subject property qualified for an exemption from the Forest Stand Delineations and Forest Conservation Plan requirements, a review of the relevant portions of the Montgomery County Code was required. Section 22A-5 of Chapter 22A of the Montgomery County Code sets forth the circumstances under which property is exempt from the forest conservation provisions of Chapter 22A. Section 22A-5(s) provides, in pertinent part, that the requirements of Article II [FSD/FCP] do not apply to:

- (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet; or
- (2) An activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved;

The citizens have alleged that the subject property does NOT fall into the Section 22A-5(s) category, since there are a number of existing specimen trees on the property. Therefore, they do not believe an exemption should have been issued.

Read in isolation, Section 22A-5(s) appears to prohibit an exemption from the Forest Conservation requirements for the subject property since specimen or champion trees exist on the subject property. However, the very next provision of the same Chapter, 22A-6 ("Exemptions-special provisions") provides that:

"Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may require tree

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<sup>3</sup> "Forest" is a specifically defined term pursuant to Section 22A-3 of the Forest Conservation Law. As discussed in this Report, other provisions of the Forest Conservation Law outline which "Forest" is subject to the forest conservation requirements.

preservation or mitigation for loss of individual trees. The plan requirements must be based on the size and character of the trees to be cleared."

Staff has interpreted Section 22A-6 to mean that a Tree Save Plan may be substituted for Forest Conservation Plans on properties where the proposed development would otherwise be exempt from the forest conservation requirements except that the development application involves clearing of specimen or champion trees. This is so stated as a note on the form exemption notice that is given to all Applicants for whom the Environmental Planning staff has approved an exemption. In this case, consistent with staff practice, a Tree Save Plan was made a requirement for review during the preliminary plan stage.

Although not the normal practice,<sup>4</sup> development review inspection staff did make a site visit to the Subject Property to determine whether an exemption was warranted.

FINDINGS: As a result of our investigation we determined that staff stated that it has consistently interpreted the language of 22A-5(s) in the manner in which it was applied in this case, and we accordingly determine that staff used due diligence in determining that the subject property qualified for an exemption.<sup>5</sup>

The Management Partners report identified that the Forest Conservation Plan Exemption procedure was a weak point in the development review process. In order to strengthen this weak point, they recommended that the Commission "establish criteria to assure consistency of exemption reviews. This should clearly articulate when a site review is necessary and when it is not." - task force

RECOMMENDATION: Management should follow the recommendation outlined in the Management Partners Report. Appropriate resources should be directed in the future in order to ensure adequate determinations are made.

## II. Adequacy of Plans and Drawings

SUMMARY OF ALLEGATION: The citizens raised the issue that Mr. Lee Sutherland, whom the Applicant and the Applicant's attorney held out as the Applicant's civil engineer and land planner, is not licensed as either a civil engineer or land planner in the State of Maryland, and, as such, was inappropriately making revisions to and otherwise processing the various plans required for review. The citizens also made the allegation that Mr. Sutherland was inappropriately cutting and pasting the required signatures on certain plans. In addition, the citizens stated there were inconsistent revision dates on these plans and no date or time stamps to indicate when the plans were received. There were also questions raised about the adequacy of the signature of Ms. Elise Cary, the Applicant's arborist, on certain versions of the tree save plans because the signatures in certain instances appeared to be cut and pasted or do not appear to match.

### a. Certification

<sup>4</sup> Environmental Planning staff indicates that normally, in determining whether an exemption should be granted, no site visit is conducted due to lack of resources. In this case however, due to concerns of the exemption reviewer as to the appropriateness of an exemption based on a review of in-house information, a development review inspector was dispatched to conduct an on-site review.

<sup>5</sup> Note that the interview team does not make any determination as to whether staff has made the correct legal conclusion in determining that the property is exempt from the Forest Conservation law requirements, merely that the staff used due diligence in granting said exemption.

In order to determine what professional certified signatures are required on the relevant plan documents, we reviewed the Montgomery County Code and M-NCPPC requirements pursuant to the Trees Technical Manual<sup>6</sup> and other internal guidelines. We found the following requirements apply to each of the following categories of plans:

**Forest Stand Delineations and Forest Conservation Plans.**

The forest stand delineation and forest conservation plan must be prepared by a licensed forester, licensed landscape architect or other qualified professional approved by the Planning Director. Section 22A-10(c) of Chapter 22A of the Code (Forest Conservation Law).

**Preliminary subdivision plans- specifications**

The subdivision plans must contain the certificate of a registered professional engineer or registered land surveyor as to source and accuracy of boundary lines, topographic data and other engineering or survey data. Section 50-34 of Chapter 50 of the Code (Subdivision Regulations)

**Tree Save Plans**

MNCPPC internal guidelines state that where specimen or champion trees are required to be preserved, staff may request surveyed location of the trees, and recommendations for tree protection measures from a certified arborist.

**1. Allegations regarding Lee Sutherland**

**FINDINGS:** After a review of the appropriate public records, we were unable to verify that Mr. Lee Sutherland is licensed as either a professional engineer, land planner or surveyor in the State of Maryland. Our review of the pertinent documents indicates that the subject preliminary plan, as required by Section 50-34 of the Code, was signed by Nelu Schwartz. Mr. Schwartz is licensed by the State of Maryland as a professional engineer. Section 50-34 requires a registered professional engineer or registered land surveyor to certify as to "the source and accuracy of boundary lines, topographic data and other engineering or survey data." The preliminary plan submitted by the Applicant includes a certification by Mr. Nelu as to the boundary and the topography on the plan.

As to the allegation that Mr. Sutherland was merely cutting and pasting the required signatures, it appears evident that the signature of the professional engineer was in fact cut and pasted on certain documents. Staff attributes this occurrence to the fact that Mr. Sutherland is not as technologically sophisticated in preparing plans as most modern surveyors and land planners. When the professional engineer was contacted he did not take exception to the fact that his name/certification was on Sutherland's drawings, implying that, though cut and pasted, he would certify to all of the information on the plans for which the signature of a professional engineer or land surveyor was necessary. The Development Review Supervisor for the subject application indicated that staff should probably have inquired as to the authenticity of the plans when submitted.

Although we find that the preliminary plan was certified by a professional engineer in accordance with the appropriate code provisions, we do not make any finding with regard to whether it was appropriate for Mr. Sutherland to process the plans notwithstanding the fact that he is not licensed as a professional land surveyor or engineer. This appears to remain of concern to the citizens. Staff did not believe that Mr. Sutherland's involvement in the application was in any way inappropriate. The Department Director did acknowledge, however, that standards should be developed that make it clear as to what the engineer or surveyor is required to attest. The Director also acknowledged that every original plan of an application be embossed so that it is clear that an engineer or surveyor has properly certified the information contained therein.

<sup>6</sup> The Trees Technical Manual is a detailed guidance document adopted by the Planning Board pursuant to Section 22A-26 of the Forest Conservation Law and used for administration of the requirements of that law.

**RECOMMENDATION:** As noted by the Department Director, and the Management Partners report, management should establish standards that make it clear what an engineer or surveyor is required to attest to, and also should establish a process that ensures that each original plan of the application clearly indicates the certification of the surveyor or engineer.

**2. Allegations regarding Ms. Cary**

**FINDINGS:** The tree save plan was signed by Elise P. Cary, who is licensed by the State of Maryland, as an arborist. Though alleged during our interviews with the citizens, there was no evidence presented that the signature of Ms. Cary was forged on any of the plan documents. Although it does appear that her signature may have been cut and pasted on certain versions, the final version of the plan contains what appears to be her signature.

**RECOMMENDATION:** None

**b. Inconsistent Plan Revision Dates**

**SUMMARY OF ALLEGATION:** The citizens made note that there were many revisions on the NRI/FSD and there were inconsistent dates of when they were revised and reviewed. Also, there appeared to be three different tree save plans in circulation.

**FINDINGS:** We have found that the revision and review dates were not clearly marked and it is understandable why confusion ensued. The Management Partners report was critical of the same problem, and reported there are too many revised plans in circulation. We agree. Having different versions of a plan in circulation at the same time makes it difficult for anyone, particularly community members wishing to review the file, to determine which plan is the most recent.

**RECOMMENDATION:** We were informed by management that this problem has been corrected, and currently each new plan should have a date stamp on it so that it is clear to the packager which version of the plan they are reviewing and which one is current. Management should be vigilant in following up to ensure that this measure is being implemented.

**III. Public Notice**

**SUMMARY OF ALLEGATION:** The citizens' allegations regarding the public record falls into two main areas. The allegations are that: 1) the Hillmead Citizens Homeowners Association had no knowledge of the pre-preliminary hearing; and 2) there are two sets of Public Records, one set for the community and one set for the developer and their attorneys.

**a. Pre-Preliminary Hearing Notice**

**FINDINGS:** The Commission rules of procedure require the Applicant at the time of application to provide a list of adjacent and confronting property owners that have been notified of the filing of the application. The Commission then sends out additional notices to the civic and the homeowner associations based upon a list of all registered homeowner's associations maintained by the Community Relations Division. Any homeowners or civic association who desires notice of a pending application must provide the Community Relations Division with the contact information for the person to whom notice should be sent.

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<sup>7</sup> Although not raised by the citizens, we discovered in the course of our investigation that Ms. Cary is married to a Commission staff member who works for the Department of Planning but had no involvement with the subject application. We raise this issue merely in the interest of full disclosure.

The pre-preliminary plan was filed with the Development Review Division on February 25, 2005. The pre-preliminary application file indicates that there were two sets of labels and one paper copy of those labels.

From a review of pre-preliminary file one is not able to determine with certainty who received the plans for the Hillmead Homeowners Association. The file copy of the computer-generated list of labels listed Marion Danis as the contact person for the Hillmead Homeowners Association, but her name was crossed-out by hand and the name of Tom Whiteman was written in over it. The citizens allege that at the time notice was sent of the pre-preliminary plan application, Ms. Danis was listed as the contact person in the Community Relations Division database. The citizens further claim that Mr. Whiteman was an interested buyer of the property, who subsequently became president. Based on the fact that Ms. Danis' name was crossed off the list and Mr. Whiteman's name was written over it, the citizens made the allegation that the Hillmead Homeowners Association was never provided notice.

Researching the computerized mailing records file, we were able to identify that Marion Danis was the individual to whom the plans were mailed. Although not dated, there is a note in the pre-preliminary plan file from the packager to the Community Relations team member responsible for updating the homeowner's association database requesting that the database be updated. We found that the Commission computer file was updated May 13, 2005, the day after the pre-preliminary hearing. Based on interviews and the above-referenced note in the file, we believe that the mark up of the file copy occurred at the same time and this confusion is a consequence of having the public record file and the working file as one and the same.

**RECOMMENDATION:** See Below

**b. *Two Sets of Public Records.***

**SUMMARY OF ALLEGATION:** One of the citizens made the statement in her testimony at the public hearing that there are two sets of public records: One set for the community and one set for the developer and their attorneys.

**FINDINGS:** Our investigation found that there were not two separate sets of records kept for this application. We found that the Development Review Division, as with all other cases, keeps one file that is available to the Applicant and all members of the public. Other review divisions also maintain their own document files. When a customer requests a division's file for review, whether that customer is the public, the applicant or the applicant's attorney, they are all given the same working file. However, the filing system is a paper-based system, and there are issues of missing file documents, the timely filing of documents and the amount of time it takes to locate document file.

**RECOMMENDATION:** The Management Partners report was very critical of the paper based filing problem. The report stated, "A secure filing system is desperately needed to assure that the files are accessible when needed." In addition, the report made a recommendation that the Commission develop a comprehensive file system and hire a librarian to manage the files. We agree with the recommendation of the Management Partners report.

**IV. Required Permits**

**SUMMARY OF ALLEGATIONS:** Another citizen in her public testimony and in her letters to certain Commission staff and to the Board stated that there was a failure to meet the standards set by the Montgomery County Code and took measures to quote the appropriate sections of the code. In addition to the concerns raised regarding the determination that the property was exempt from the Forest Conservation requirements discussed in detail above, she specifically questioned why staff determined that the Applicant was not required to submit sediment control,

wetland and floodplain permits as required by law. The citizen alleged that there was a wetland nearby and indicated she had proof that there was a floodplain on the property, therefore she alleges staff broke the law by not ensuring the required permits were obtained.

**FINDINGS:** Our investigation found that Montgomery Code does require the permits the citizen indicated are necessary; however, when these permit requirements are reviewed in the proper context of the subject application, there is no evidence that there has been a deliberate effort to evade the law or break the law.

In the context of this development, final sediment controls measures are not required to be submitted until the building permit stage, when the exact house footprint and other details are known. It is at that time a permit would be required. Wetland permits are required from the Corp of Engineers when wetlands are to be disturbed. Contrary to citizens' assertion, there are no identified wetlands in this development and thus, no permit would be required. The land area the citizens allege contains wetlands is located on the Park property and is not proposed to be disturbed. As with wetland permits, floodplain permits are only required when the land proposed for disturbance is in a floodplain. If an application restricts the development to outside the flood plain and the normal 25 feet required building restriction line, a floodplain permit is not required. Thus, even if it is determined that a floodplain exists on a property, a floodplain permit is only required if the Applicant proposes to disturb the floodplain.<sup>8</sup>

As an additional note, the citizens made allegations that the staff was negligent in undertaking a determination as to the presence of wetlands on the site. Without commenting on the merits of the staff's determination that there are no wetlands on the site, we find that staff used due diligence in its review. Based on a review of the information submitted by the Applicant and Commission records regarding soil types and other information, Environmental Planning Staff raised the issue as to whether wetlands were present on the site and required additional information from the Applicant. In addition, the staff did visit the subject property in order to make an on-site determination as to the presence of wetlands.

**RECOMMENDATION:** None

**V. Undue Staff Influence**

**a. Acquiring The Property As Additional Parkland**

**SUMMARY OF ALLEGATION:** During the same time the citizens were researching the proposed application, they were in contact with the Parks Land Acquisition Unit to discuss the possibility of the Commission acquiring the property as additional parkland. In addition, the citizens nominated the property for the Legacy Open Space acquisition program. The citizens reported that during their initial contact with staff they received positive feedback that acquiring the property as additional parkland was a good idea. However, when the different divisions completed their reviews, each made a final recommendation that the Board *not* acquire the property. The citizens, based exclusively on conjecture, concluded that there was some type of undue influence that made staff change its recommendation.

**FINDINGS:** Our investigation substantiated that staff used due diligence in evaluating the merits of acquiring the property as an addition to Hillmead Neighborhood Park and that there was no undue influence placed upon staff to reach a decision not to acquire the property. As discussed in

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<sup>8</sup> As noted in this report, the citizens have raised an issue as to whether a floodplain exists on the property and whether the Commission was negligent in failing to uncover certain maps that identify floodplain on the property. The existence of floodplain on the property is beyond the scope of this report. In Section VI we discuss staff's role in identifying floodplain on property that is the subject of a development application.



the staff report, such determinations are based on distinct criteria. Staff determined that the property did not meet the area's need for a soccer field. Parking and costs were also cited as issues and the property scored very low in the Legacy Open Space site evaluation matrix. Inasmuch as these determinations were made in the context of stated criteria, we find that staff used due diligence in determining to recommend that the subject property not be acquired by the Commission.

RECOMMENDATION: None

**b. *Suitability For Residential Use***

**SUMMARY OF ALLEGATIONS:** During our interviews, the citizens made the allegation that the Environmental Planning staff held the opinion that the proposal for a four-lot subdivision did not meet the resubdivision criteria of the Subdivision Regulations. In support of that allegation, the citizen's point to an email they found as a result of reviewing the public files written by an Environmental Planning Division staff member to the staff at the Department of Permitting Services. That email contained the statement that "Since it is a re-subdivision with steep slopes I believe we can make a very strong case that a 4 lot re-subdivision does not meet the 'suitability for residential use' criteria because it would require a stormwater management waiver to create the four lots".

Because this email is in conflict with conclusions reached in the final Staff Report submitted to the Planning Board, the citizens concluded that there was some type of undue influence that made staff change its conclusion.

**FINDINGS:** Our investigation found that while the information in the email appears to conflict or contradict the final Staff Report, it showed that when these facts were placed in the proper context or perspective, there is no evidence of undue influence that made staff change its conclusion.

Our review found that the email was in response to a discussion between Commission staff and Department of Permitting Services staff as to whether or not to grant a stormwater waiver because the DPS staff mistakenly was under the impression that the Planning Board had already approved four lots. During our interview with the Commission staff member who authored the email, he stated that he was pointing out that if DPS granted a waiver for stormwater management, then it was his opinion that the portion of the property requiring a waiver would not meet the "suitability for residential use" criteria in the re-subdivision law. Ultimately, the Department of Permitting Services approved a stormwater management concept for the lots in question, rendering the need for a waiver as well as the comments of the Environmental Planning Staff member moot.

RECOMMENDATION: None

**VI Accuracy of Staff Report**

**a. *Reported Slope***

**SUMMARY OF ALLEGATION:** The citizens made the statement a number of times during their testimony at the public hearing that there was a deliberate attempt to falsify documents. As it relates to Commission staff, the citizens indicated that the Staff Report states the slope on the subject property is 24% and citizens alleged that the property slopes are greater. The citizens stated that they believe the reason that the slope was stated to be 24% was to keep it under 25%, because "land-disturbing activity is over 25%" and the subdivision regulations and environmental



guidelines allow the Board to take greater protection of land that meets or exceeds the 25% threshold.<sup>9</sup>

**FINDINGS:** During our investigation we were unable to determine why the Staff Report contained the statement the "site slopes fairly dramatically approaching 24%." The packager stated that he calculated the slopes measurement according to standard procedure, and that the 24% slope was the result of that calculation. However, despite numerous attempts by the investigative team and other Commission staff members who have experience in calculating slopes to duplicate that calculation, we were unable to arrive at the same result. Although we find no evidence of a deliberate attempt to distort the slope calculation, we find that the method the packager used to measure the slopes does not appear to be the optimal, "best practices" method of measuring slopes. It also appears that there is inadequate discussion of the support for the findings and conclusions made in the staff report with regard to the slopes.

**RECOMMENDATION:** The Management Partners report identified several issues with staff reports. Among other things, the report noted that staff reports often contain erroneous details, omit pertinent facts, and do not clearly spell out residents' concerns. We agree with the Management Partners report recommendation with regard to the need for improvements to staff reports.

**b. Driveway Sight Distance Evaluation**

**SUMMARY OF ALLEGATION:** During a subsequent interview, the citizens pointed out that the driveway site distance evaluations approved by the Department of Public Works and Transportation attached to the Staff Report do not appear to be based on the information presented in the preliminary plan.

**FINDINGS:** On closer inspection the sight distance evaluation forms approved and the approval letter from the Department of Public Works and Transportation, it appears clear that they refer to the proposed driveway configuration layout for the pre-preliminary plan. There was a major revision in the driveway configuration in the preliminary plan application. When we inquired why this was not caught prior to staff's inclusion of inconsistent documents in the final Staff Report, the packager stated it was a staff error.

We also concluded that these errors identified in subject application were the result of staff's lack of attention to details in the Staff Report rather than a deliberate attempt to falsify documents.

**RECOMMENDATION:** The Management Partners report also identified lack of accuracy in the Staff Reports as a systemic development review problem. The report states "Interviews revealed multiple issues requiring attention. Because staff members are so busy with varied tasks, preparation of Staff Reports has often been rushed. Supervisors do not have enough review time." We agree with the Management Partners report recommendation with regard to the need to give management more time to review the staff reports.

**c. Floodplain**

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<sup>9</sup> Section 50-32(c) of the Subdivision Regulations provides in pertinent part that "[t]he Board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers."

**SUMMARY OF ALLEGATIONS:** The citizens essentially allege staff neglect in the failure to determine that certain floodplain maps show a floodplain on the subject property. On their own initiative, the citizens were able to uncover floodplain maps and were instrumental getting this information to both Commission and Department of Permitting Services staff approximately two days before the hearing.

**FINDINGS:** According to the Lead agency protocol established in or around the early 1990's, the Department of Permitting Services is solely responsible for making floodplain determinations. As a result, the Commission follows DPS's lead and does not undertake any independent analysis as to the existence of floodplain on a given piece of property. Management and staff indicated their unanimous agreement that due to the lead agency agreement as well as the fact that the Department has no civil engineers on staff that would be capable of making such a determination, the Commission staff clearly is not responsible, nor is it equipped to make floodplain determinations.

**RECOMMENDATION:** It appears that the reliance of staff on the DPS determination of no floodplain on the subject site was in accordance with procedure. Notwithstanding DPS' lead role in making floodplain determinations, the Board is ultimately the approval authority for preliminary plans. Therefore, the Board may wish to consider validating that the memoranda of understandings regarding the lead agency protocol are working in the manner in which the Board desires it to work.

#### **VII. Improper Interaction Between Staff And The Applicant**

**SUMMARY OF ALLEGATION:** The citizens make the allegation that staff engaged in improper contact and discussions with the Applicant and suggest that rules against ex parte communications were violated.

**FINDINGS:** We did not find any evidence of improper contact between staff and the Applicant. While ex parte communications with Board members are prohibited, a vital component of the development review process is the interaction between staff and the Applicant in order to ensure the thorough and fair review of an application.

One of the items that we believe needs to be addressed, and standardized by procedure is whether it is acceptable for the package or other reviewer to share a draft of the Staff Report, or the proposed conditions, with the Applicant or the Applicant's Attorney. We are aware of the advantage that sharing the draft Staff Report and/or conditions before the public hearing prevents the unnecessary waste of time at a public hearing negotiating the wording of conditions. There is also an issue as to whether draft staff reports and/or conditions should be shared with the general public.

**RECOMMENDATION:** Management should standardize by procedure whether it is acceptable for the packager or other reviewer to share a draft of the Staff Report or the proposed conditions with the Applicant or the Applicant's Attorney.

#### **Additional Comments and Observations**

The review timeline for the Hillmead/Bradley Hills re-subdivision application places it in the same time frame as Clarksburg Town Center reform efforts. As part of that reform effort there have been a number of major changes in the way the Commission does business. These changes hopefully will address the various management recommendations and thus should prevent the types of allegations made in the subject case from arising in the future. The major change is the movement towards a regulatory process that is completely transparent to the public.

A note of caution: Transparency of the Development Review Process does not necessarily provide lucidity to the process. In other words, a process that is open and fully encourages and welcomes citizen participation does not necessarily mean that process will be user-friendly to the public.

In this case, the citizens, through their own efforts, had a great deal of access to the development review process. However, as our investigation found, the development review process is not always easy for the public to understand. It is not free from obscurity, and issues are subject to misinterpretation unless they are placed in the proper context or perspective. It must be remembered that in addition to transparency of process that is provided to the public, the proper context or perspective must also be provided at the same time. Staff should be vigilant in ensuring that, upon request, they take the time to patiently and politely answer any inquiries about the process or particular development applications.

Exhibit I

**LIST OF INTERVIEWEES**

Sue Ghosh-Stricklett, Citizen

Harriett Lurensky Kuhn, Citizen

Angela Brown, DRD, MRO

Mary Bradford, Montgomery Parks, Parkside

Candy Bunnag, Environmental Planning Division, MRO

Cathy Conlon, DRD, MRO

Steve Federline, Environmental Planning Division, MRO

Marco Fuster, DRD, MRO

William Gries, Park Development Division, Parkside

Faroll Hamer, Office of the Director, MRO

Rose Krasnow, DRD, MRO

Amy Lindsey, Environmental Planning Division, MRO

Mark Pfefferle, Environmental Planning Division, MRO

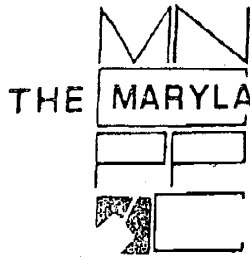
Doug Powell, Countywide Planning, MRO-Annex

Dominic Quattrochi, Countywide Planning, MRO

Tanya Schmieler, Countywide Planning, MRO-Annex

Nelu Schwartz, Professional Engineer

Richard Weaver, DRD, MRO



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

6611 Kenilworth Avenue • Riverdale, Maryland 20737

May 30, 2006

Ms. Sue Ghosh-Stricklett  
8733 Ridge Road  
Bethesda, Maryland 20817

Harriett Lurensky Kuhn  
8705 Lowell Street  
Bethesda, Maryland 20817

Ms. Ghosh-Stricklett and Ms. Kuhn:

Thank you for taking the time to meet with Ms. Lisa Jackson and me on Monday May 22, 2006 to discuss in extended detail the serious allegations you have raised regarding possible improprieties in the proposed development process of the Piotrow property at 6221 Bradley Boulevard. As you know, at the request of the Montgomery County Planning Board, Ms. Jackson and I will be conducting an independent review into the very serious allegations you have raised.

The purpose of this letter is to confirm our general understanding of each of the allegations you have raised so that it is clear both to us and to you the nature and scope of the investigation we will undertake. As a result of our meeting, our understanding of the allegations we will investigate is as follows:

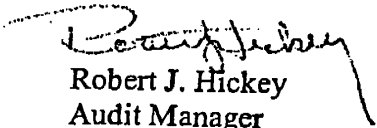
- 1) Whether staff used due professional diligence in determining that the property should be exempt from the Forest Conservation requirements of the Montgomery County Code;
- 2) Whether staff used due professional diligence in determining that the Applicant was not required to submit a sediment control, wetland and floodplain permits;
- 3) Whether staff used due diligence in generally determining what development requirements are required for the proposed project;
- 4) Whether staff used due diligence in reviewing potentially inconsistent series of drawings and plans for the proposed project submitted by the Applicant;
- 5) Whether staff used due diligence in determining the authenticity of certain documents that were submitted and whether certain documents should have been accepted for filing;

Ms. Sue Ghosh-Stricklett  
Harriett Lurensky Kuhn  
May 30, 2006  
Page 2

- 6) Whether staff improperly kept certain documents that were submitted by opponents of the property out of the public record; and
- 7) Whether staff interacted with you, as members of the public in an appropriate manner.

If after reviewing this letter and the above outline of the planned points of our investigation you do not believe the planned scope of our investigation is accurate, please provide us with the corrected information in writing as soon as possible. We will then begin our investigation forthwith. If you have any questions in the meantime, please do not hesitate to contact me at (301) 454-1444 or Ms. Jackson at (301) 454-1670.

Sincerely,



Robert J. Hickey  
Audit Manager

cc: Ms Jackson







## Resubdivision Table

## COMPARABLE LOT DATA TABLE - PIOTROW PROPERTY (#1-06048) Page 1 of 1

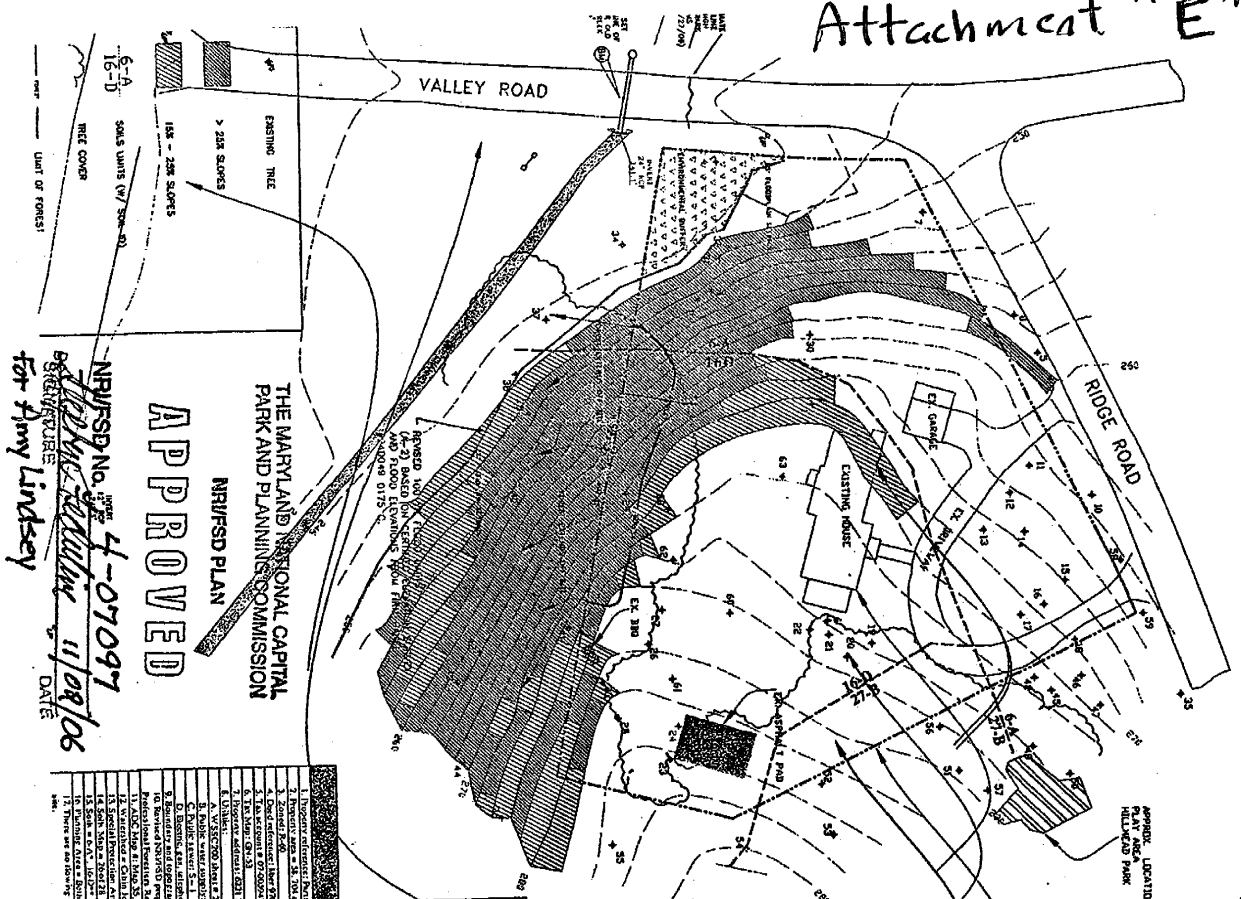
Hillmead/ Bradley Hills ( September 5, 2006 ) (Revised 11-16-06)

## LOT BLOCK FRONTAGE ALIGNMENT SIZE SHAPE WIDTH BUILDABLE

#	#	L.F.		S. F.		@ B.R.L.	AREA
+ 1	2-H	N/A	Corner	7,210	Rectangle	70'+/- 100'+/-	2,750 sq.ft.
+ 23	"	62'	Perpendicular	6,227	"	62'	2,280 " "
+ 22	"	62'	"	6,616	"	62'+/-	2,668 " "
+ 21	"	62'	Radial	7,903	"	62'+/-	3,390 " "
+ 20	"	61'	"	7,623	"	62'+/-	3,442 " "
+ 19	"	61'	"	7,556	"	62'+/-	3,360 " "
+ 18	"	61'	"	7,138	"	62'+/-	2,576 " "
+ 17	"	61'	Perpendicular	7,306	"	62'+/-	3,212 " "
+ 16	"	76'	Radial	7,220	"	63'+/-	3,080 " "
+ 15	"	100.22'	"	7,200	Pic	73'+/-	2,600 " "
* 22	3	110'	Radial	22,506	Irregular	105'+/-	14,775 " "
* 23	"	148'	"	19,623	"	130'+/-	12,880 " "
AVERAGE		78.3'	-	9,511	-	74.3'+/-	5,174 " "
PROPOSED LOTS							
+ 102	1	63'	Perpendicular	15,845	Rectangle	63'	8,820 " " or 55.7%
+ 103	"	63'	"	15,971	"	63'	9,113 " " or 57.1%
+ 104	"	63'	"	13,041	"	63'	7,065 " " or 54.2%
+ 105	"	102'	Corner	13,747	Irregular	135' & 68'	3,896 " " or 28.3%
AVERAGE		73'	-	14,651	-	78.4'+/-	7,224 " " or 49.3%

+ These lots are a resubdivision of land shown on Plat 234 ( 1922 ).

\* These lots have been resubdivided two (2) times - 1951 (plat # 2865) = 3 lots + 1 outlot &amp; 1952 (plat # 3029) = 2 lots.



THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NR/FSD PLAN

**APPROVED**

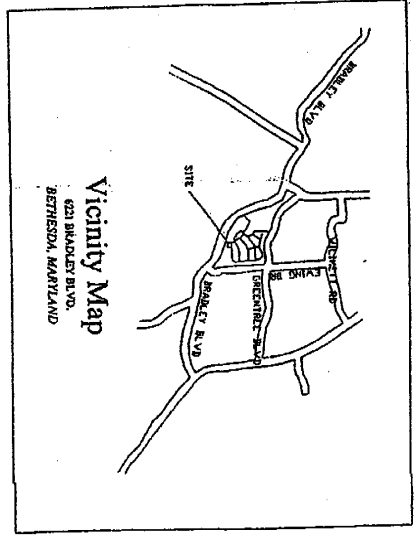
NR/FSD No. 4-07097

DATE 11/08/06

For Amy Lindsey

Area	Acres	Sq. Ft.	Linear Ft.
Area within 100 Year Floodplain	0.00	2072	0
Area of Forest within 100 Year Floodplain	0.00	0	0
Area of Wetlands	0.00	0	0
Area of Wetlands in Forest	0.00	3180	0
Area of Seasonal Wetlands	0.00	0	0
Existing Forest Cover	0.06	3447	0

1. Property address: 6221 Bradley Blvd., Bethesda, MD 20814
2. Property map: 1:25,000 scale, dated 1992, showing the property boundary and the location of the proposed development.
3. Zoning: The property is zoned R-1, Single-Family Detached, by the City of Bethesda.
4. Environmental: The property is located in a forested area and is adjacent to a stream.
5. The proposed development is a 2.0-acre lot.
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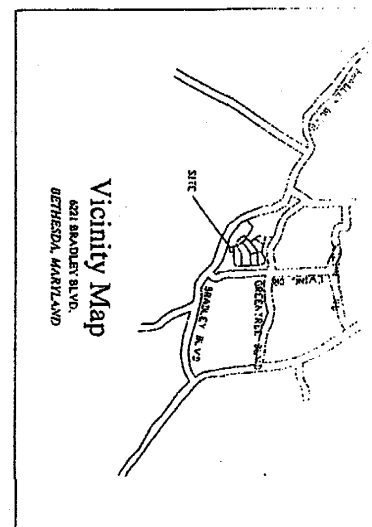
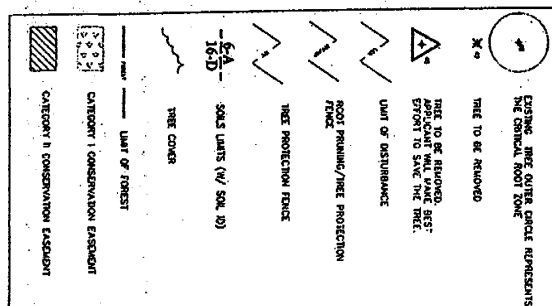
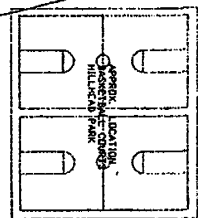
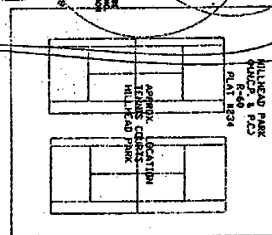


Area	Acres	Sq. Ft.	Linear Ft.
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Area of Forest within 100 Year Floodplain	0.00	0	0
Area of Wetlands	0.00	0	0
Area of Wetlands in Forest	0.00	3180	0
Area of Seasonal Wetlands	0.00	0	0
Existing Forest Cover	0.06	3447	0



Plan No. 1-06048  
 Signature *[Signature]* 11/04/06  
 DATE

THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION  
PRELIMINARY FOREST CONSERVATION PLAN  
**CONDITIONAL  
APPROVAL**



## PRELIMINARY FOREST CONSERVATION PLAN

FOR  
PIOTROW PROPERTY  
6221 BRADLEY BLVD.  
BETHESDA, MARYLAND

23



**Zimar & Associates, Inc.**  
ARBORICULTURE FORESTRY CONSULTING  
10105 Residency Road, Suite 207  
Manassas, Virginia 20110  
Tel (703) 331-3731 Fax (703) 331-1359

DATE: 11.6.06  
SHEET: 1 of 3  
DRAWN BY: BA  
SCALE: 1" = 30'



# Federal Emergency Management Agency

Washington, D.C. 20472

Attachment "G"

August 24, 2006

THE HONORABLE DOUGLAS DUNCAN  
COUNTY EXECUTIVE  
MONTGOMERY COUNTY  
101 MONROE STREET, 2ND FLOOR  
ROCKVILLE, MD 20850

CASE NO.: 06-03-B772A  
COMMUNITY: MONTGOMERY COUNTY,  
MARYLAND  
(UNINCORPORATED AREAS)  
COMMUNITY NO.: 240049

DEAR MR. DUNCAN:

This is in reference to a request that the Federal Emergency Management Agency (FEMA) determine if the property described in the enclosed document is located within an identified Special Flood Hazard Area, the area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood), on the effective National Flood Insurance Program (NFIP) map. Using the information submitted and the effective NFIP map, our determination is shown on the attached Letter of Map Revision (LOMR) Floodway Determination Document. This determination document provides additional information regarding the effective NFIP map, the legal description of the property and our determination.

Additional documents are enclosed which provide information regarding the subject property and LOMRs. Please see the List of Enclosures below to determine which documents are enclosed. Other attachments specific to this request may be included as referenced in the Determination/Comment document. If you have any questions about this letter or any of the enclosures, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, 3601 Eisenhower Avenue, Suite 130, Alexandria, VA 22304-6439.

Sincerely,

William R. Blanton Jr., CFM, Chief  
Engineering Management Section  
Mitigation Division

## LIST OF ENCLOSURES:

LOMR-FW DETERMINATION DOCUMENT (REMOVAL)

cc: State/Commonwealth NFIP Coordinator  
Community Map Repository  
Region  
Mr. Mark G. Morelock

24



# Federal Emergency Management Agency

Washington, D.C. 20472

August 24, 2006

THE HONORABLE DOUGLAS DUNCAN  
COUNTY EXECUTIVE  
MONTGOMERY COUNTY  
101 MONROE STREET, 2ND FLOOR  
ROCKVILLE, MD 20850

CASE NO.: 06-03-B772A  
COMMUNITY: MONTGOMERY COUNTY,  
MARYLAND  
(UNINCORPORATED AREAS)  
COMMUNITY NO.: 240049

DEAR MR. DUNCAN:

This is in reference to a request that the Federal Emergency Management Agency (FEMA) determine if the property described in the enclosed document is located within an identified Special Flood Hazard Area, the area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood), on the effective National Flood Insurance Program (NFIP) map. Using the information submitted and the effective NFIP map, our determination is shown on the attached Letter of Map Revision (LOMR) Floodway Determination Document. This determination document provides additional information regarding the effective NFIP map, the legal description of the property and our determination.

Additional documents are enclosed which provide information regarding the subject property and LOMRs. Please see the List of Enclosures below to determine which documents are enclosed. Other attachments specific to this request may be included as referenced in the Determination/Comment document. If you have any questions about this letter or any of the enclosures, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, 3601 Eisenhower Avenue, Suite 130, Alexandria, VA 22304-6439.

Sincerely,

William R. Blanton Jr., CFM, Chief  
Engineering Management Section  
Mitigation Division

## LIST OF ENCLOSURES:

### LOMR-FW DETERMINATION DOCUMENT (REMOVAL)

cc: State/Commonwealth NFIP Coordinator  
Community Map Repository  
Region  
Mr. Mark G. Morelock

bcc: LOMC Subscription Service  
Michael Baker, Jr., Inc. Case File  
Michael Baker, Jr., Inc. Project File



# Federal Emergency Management Agency

Washington, D.C. 20472

## LETTER OF MAP REVISION FLOODWAY DETERMINATION DOCUMENT (REMOVAL)

COMMUNITY AND MAP PANEL INFORMATION		LEGAL PROPERTY DESCRIPTION
COMMUNITY	MONTGOMERY COUNTY, MARYLAND (Unincorporated Areas)	A parcel of land as described in the Deed recorded in Liber 9707, Folio 065, 066 and 067, in the Office of the Recorder, Montgomery County, Maryland (TM:GN53; TL:P5)  The portion of property to be removed from the SFHA is more particularly described by the following metes and bounds:
	COMMUNITY NO.: 240049	
AFFECTED MAP PANEL	NUMBER: 2400490175C	BEGINNING in the southeast corner of the property; thence N79°21'59"W, 244.02 feet; thence N20°36'11"W, 19.14
	DATE: 8/1/1984	
FLOODING SOURCE: BOOZE CREEK		APPROXIMATE LATITUDE & LONGITUDE OF PROPERTY: 38.997, -77.126 SOURCE OF LAT & LONG: PRECISION MAPPING STREETS 7.0      DATUM: NAD 83

### DETERMINATION

LOT	BLOCK/ SECTION	SUBDIVISION	STREET	OUTCOME WHAT IS REMOVED FROM THE SFHA	FLOOD ZONE	1% ANNUAL CHANCE FLOOD ELEVATION (NGVD 29)	LOWEST ADJACENT GRADE ELEVATION (NGVD 29)	LOWEST LOT ELEVATION (NGVD 29)
--	--	--	6221 Bradley Boulevard	Portion of Property	B	245.7 to 250.0 feet	270.0 feet	245.8 to 279.6 feet

**Special Flood Hazard Area (SFHA)** - The SFHA is an area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood).

**ADDITIONAL CONSIDERATIONS** (Please refer to the appropriate section on Attachment 1 for the additional considerations listed below.)

LEGAL PROPERTY DESCRIPTION  
PORTIONS REMAIN IN THE FLOODWAY

This document provides the Federal Emergency Management Agency's determination regarding a request for a Letter of Map Revision for the property described above. Using the information submitted and the effective National Flood Insurance Program (NFIP) map, we have determined that the described portion(s) of the property(ies) is/are not located in the NFIP regulatory floodway or the SFHA, an area inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood). This document revises the effective NFIP map to remove the subject property from the NFIP regulatory floodway and the SFHA located on the effective NFIP map; therefore, the Federal mandatory flood insurance requirement does not apply. However, the lender has the option to continue the flood insurance requirement to protect its financial risk on the loan. A Preferred Risk Policy (PRP) is available for buildings located outside the SFHA. Information about the PRP and how one can apply is enclosed.

This determination is based on the flood data presently available. The enclosed documents provide additional information regarding this determination. If you have any questions about this document, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, 3601 Eisenhower Avenue, Suite 130, Alexandria, VA 22304-6439.

*William R. Blanton Jr.*

William R. Blanton Jr., CFM, Chief  
Engineering Management Section  
Mitigation Division

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## Federal Emergency Management Agency

Washington, D.C. 20472

**LETTER OF MAP REVISION FLOODWAY  
DETERMINATION DOCUMENT (REMOVAL)****ATTACHMENT 1 (ADDITIONAL CONSIDERATIONS)****LEGAL PROPERTY DESCRIPTION (CONTINUED)**

feet; thence N44°34'11"W, 19.28 feet; thence N14°29'10"W, 8.77 feet; thence N62°07'49"W, 24.32 feet; thence N66°47'32"W, 6.84 feet; thence N15°20'58"W, 16.28 feet; thence S65°05'03"W, 2.37 feet; thence N05°31'00"E, 6.70 feet; thence 52.87 feet along a curve to the left having a radius of 648.84 feet; thence N64°10'50"E, 202.25 feet; thence 42.80 feet along a curve to the right having a radius of 498.86 feet; thence S25°49'10"E, 216.06 feet; thence S14°59'20"W, 86.90 feet to the POINT OF BEGINNING

**PORTIONS OF THE PROPERTY REMAIN IN THE FLOODWAY (This Additional Consideration applies to the preceding 1 Property.)**

A portion of this property is located within the Special Flood Hazard Area and the National Flood Insurance Program (NFIP) regulatory floodway for the flooding source indicated on the Determination/Comment Document while the subject of this determination is not. The NFIP regulatory floodway is the area that must remain unobstructed in order to prevent unacceptable increases in base flood elevations. Therefore, no construction may take place in an NFIP regulatory floodway that may cause an increase in the base flood elevation, and any future construction or substantial improvement on the property remains subject to Federal, State/Commonwealth, and local regulations for floodplain management. The NFIP regulatory floodway is provided to the community as a tool to regulate floodplain development. Modifications to the NFIP regulatory floodway must be accepted by both the Federal Emergency Management Agency (FEMA) and the community involved. Appropriate community actions are defined in Paragraph 60.3(d) of the NFIP regulations. Any proposed revision to the NFIP regulatory floodway must be submitted to FEMA by community officials. The community should contact either the Regional Director (for those communities in Regions I-IV, and VI-X), or the Regional Engineer (for those communities in Region V) for guidance on the data which must be submitted for a revision to the NFIP regulatory floodway. Contact information for each regional office can be obtained by calling the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or from our web site at <http://www.fema.gov/about/regoff.htm>.

This attachment provides additional information regarding this request. If you have any questions about this attachment, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, 3601 Eisenhower Avenue, Suite 130, Alexandria, VA 22304-6439.

William R. Blanton Jr., CFM, Chief  
Engineering Management Section  
Mitigation Division

FEDERAL EMERGENCY MANAGEMENT AGENCY  
COMMUNITY ACKNOWLEDGMENT FORM

O.M.B. NO. 3067-0147  
Expires September 30, 2005

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 0.88 hour per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing this burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington DC 20472, Paperwork Reduction Project (3067-0147). Submission of the form is required to obtain or retain benefits under the National Flood Insurance Program. **Please do not send your completed survey to the above address.**

This form must be completed for requests involving the existing or proposed placement of fill (complete Section A) OR to provide acknowledgment of this request to remove a property from the SFHA which was previously located within the regulatory floodway (complete Section B).

This form must be completed and signed by the official responsible for floodplain management in the community. The community number and the subject property address must appear in the spaces provided below.

Community Number: 240049

Property Name or Address:

6221 Bradley Boulevard  
Bethesda, MD 20817

A. REQUESTS INVOLVING THE PLACEMENT OF FILL (N/A)

As the community official responsible for floodplain management, I hereby acknowledge that we have received and reviewed this Letter of Map Revision Based on Fill (LOMR-F) or Conditional LOMR-F request. Based upon the community's review, we find the completed or proposed project meets or is designed to meet all of the community floodplain management requirements, including the requirement that no fill be placed in the regulatory floodway, and that all necessary Federal, State, and local permits have been, or in the case of a Conditional LOMR-F, will be obtained. In addition, we have determined that the land and any existing or proposed structures to be removed from the SFHA are or will be reasonably safe from flooding as defined in 44CFR 65.2(c), and that we have available upon request by FEMA, all analyses and documentation used to make this determination. For LOMR-F requests, we understand that this request is being forwarded to FEMA for a possible map revision.

Community Comments:

Community Official's Name and Title: (Please Print or Type)

Telephone No.:

Community Name:

Community Official's Signature: (required)

Date:

B. PROPERTY LOCATED WITHIN THE REGULATORY FLOODWAY

As the community official responsible for floodplain management, I hereby acknowledge that we have received and reviewed this request for a LOMA. We understand that this request is being forwarded to FEMA to determine if this property has been inadvertently included in the regulatory floodway. We acknowledge that no fill on this property has been or will be placed within the designated regulatory floodway. We find that the completed or proposed project meets or is designed to meet all of the community floodplain management requirements.

Community Comments: This is an Acknowledgement for the Letter of Map Amendment (LOMA/MT-EZ) Applied for in Reference To #6221 Bradley Boulevard, Bethesda, MD 20817 i.e. Part of lots 5, 6, 7 and 8, in the Hillmead - Bradley Hills Subdivision.

Community Official's Name and Title: (Please Print or Type)

Telephone No.:

Richard R. Brush, MANAGER

240-777-6343

Community Name:

Community Official's Signature: (required)

Date:

Montgomery County, MD

*[Signature]*

8/15/06



TABLE 1

## LEGACY OPEN SPACE SITE EVALUATION MATRIX (Protecting our Quality of Life, environment and economic vitality)

Index Ranking (Weighted Score)	Value Range	6221 Bradley Blvd
<b>Public Water Supply</b>	(0-20)	0
<b>Natural Resources</b>		
Watershed Designation (Use III, IV, P) CSPS Priority, Excel WQ)	(1-5)	0
Patuxent Primary Management Area (1/4 mile from mainstem; 1/8 mile from all tributaries)	(0-10)	0
Priority Subwatershed identified by County-wide Stream Protection Strategy (CSPS)	(0-5)	0
Headwater Position and Drainage Area	(1-5)	0
Wetlands (Quality/Percentage)	(1-5)	0
Streams, Seeps vernal pools, other hydrologic features	(0-5)	0
Forest Resources (acreage/percentage forested)	(0-10)	0
Quality/Age/Stand Composition	(0-5)	0
FID Habitat(min 100ac, part of 500ac, with FID habitat >25% of ac, 300'buffer.)	(0-10)	0
Upland Forest Resource (Significant Lack of Upland Forest in MC Parks System)	(0-10)	0
Significant Trees (Size, Species, Health, Abundance)	(0-5)	3
Rarity of Habitat or Habitat Uniqueness	(0-10)	0
RTES (Factor S and G Ranking/Significance of population)	(0-10)	0
Invasive Plant Species	(-5-5)	-1
<b>Heritage Resources/Local or National Registry Designation</b>	(0-10)	0
Historic/Archaeological Resources (Contribution to Heritage Themes)	(0-5)	0
Heritage Resource Cluster: <b>Farming History, Industry Heritage, Rail Community.</b>	(0-5)	0
<b>Trail/Park Connectivity (Greenway Connections)</b>	(0-10)	0
Gaps in major trail corridors identified by the County-wide Park Trail Plan	(0-10)	0
Human or ecological connectivity betw. Sign. park, natural or historic areas	(0-10)	0
Buffers or protects other significant resources	(0-10)	0
<b>Farmland and Rural Open Space (Agricultural Reserve)</b>	(0-10)	0
Prime Agricultural Soils	(0-10)	0
Working Farms	(0-5)	0
Public Resource Rarity/Availability	(0-10)	0
Scenic Vistas Viewsheds	(0-10)	0
<b>Urban Spaces/Green Boulevards</b>	(0-10)	
Protect open space in areas of high population density, increases public access	(0-10)	8
<b>OTHER (Non LOS Themed) CRITERIA</b>		
Development Potential	(0-10)	10
Vulnerability Criteria	(-10-10)	7
Developable Area (i.e. % of property already encumbered)	(-10-10)	7
Priority Funding Area Water+Sewer/Metro/Supporting Infrastructure	(-10-0)	-3
Particular County-wide, regional, or national significance	(0-10)	0
Park/Public Ownership Suitability, Ease of Maintenance ORI	(0-10)	5
Educational opportunities for broadening interpretation and public understanding	(0-10)	3
<b>Score (Maximum Score is 300)</b>		39

28A

**FRIENDS OF HILLMEAD PARK  
BETHESDA, MD 20817**

October 18, 2006

Royce Hanson  
Chairman  
Montgomery County Planning Board  
Montgomery County Department of Park & Planning  
The Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Hickey-Jackson Investigative Report [#06-SP-098]  
Hillmead/Bradley Hills Re-Subdivision Case #120060480

Dear Mr. Chairman:

We are writing to respond to the above referenced report (the "report") submitted by Mr. Robert Hickey and Ms. Lisa Jackson (the "investigators") to the Montgomery County Planning Board. The report was requested by former Chairman Derick Berlage to investigate specific allegations made by us and a few other citizens during the May 4, 2006 Planning Board Hearing to review preliminary plans for the case noted above.

While the report states that "the evidence presented by the citizens made a compelling case" and that "the allegations contain factual information," the report concludes that "there is no evidence that there has been a deliberate effort to evade the law or break the law by any M-NCPPC staff member."

To the best of our knowledge, the investigators did not have the capability or the tools available to them to investigate evidence of a deliberate effort or the "intent" behind actions taken by key M-NCPPC staff. Consequently, the investigators presume that the staff acted in good faith and that inconsistencies no matter how flagrant are attributable to clerical error or staff's inattention to details. On the other hand, if an inquiry into a deliberate effort by staff can indeed be constructed by reviewing a pattern of actions, this is also limited in scope since the investigators did not have access to critical documents and key staff at the Department of Permitting Services (DPS) who have overlapping review and permitting responsibilities in this case.

We also do not believe that the report truly represents an "independent" fact finding study since one of the investigators, Ms. Jackson, clearly stated to us that she reports to M-NCPPC General Counsel Adrian Gardner. We are not aware of any specific firewalls established regarding information sharing and communications between M-NCPPC staff and the investigators.

Here are our comments regarding a few of the key findings reported by the investigators:

**1. Professional credibility of preparer and packager of subject plans:**

a. The report does not refute the fact that Mr. Lee Sutherland is the person who is responsible for all drawings and submissions in the subject case. Our own neighborhood observation has been that Mr. Sutherland is the only person who did any on-site visits for the project. We also observed him taking tree measurements with a 12 inch metal ruler.

b. The report confirms that:

- ✓ Mr. Sutherland is not licensed in the State of Maryland as a civil engineer, land planner or any other type of qualified preparer as defined by the law;
- ✓ signatures by Elise Carey and Nelu Schwartz – the only two licensed qualified preparers in this case – were grafted and pasted by Mr. Sutherland;
- ✓ revision and review dates on the plans are inconsistent and, again, grafted and pasted by Mr. Sutherland;
- ✓ there is no evidence on record that the licensed preparers conducted an on-site visit;
- ✓ there is no evidence on record that the licensed preparers verified the drawings and submissions in any other way.

c. The report does not dispute the legal definition of a qualified preparer. The report further notes that the "Development Review Supervisor for the subject application should probably have inquired as to the authenticity of the plans when submitted." However, the investigators conclude that the "Staff did not believe that Mr. Sutherland's involvement in the application process was in any way inappropriate." The Staff attributes the cutting and pasting of signatures of the licensed preparer and the inconsistent dates "to the fact that Mr. Sutherland is not as technologically sophisticated in preparing plans as most modern surveyors and land planners."

**2. Forest Conservation Exemption:**

a. The report does not dispute the legal requirements of when a property can be exempt from the Forest Stand Delineation and Forest Conservation Plan. However, the investigators conclude that "that staff used due diligence in determining that the subject property qualified for an exemption." The report states that the subject property qualifies for the Forest Conservation Exemption under Section 22A-6. One would think that the language of this section makes it clear that this section cannot apply where "the proposed activity involves clearing of a specimen tree or champion tree." The investigators further fail to note that the subject applicant never submitted the required declaration of intent that documents why the subject application qualifies for an exemption under the law.

b. The report goes to great lengths in noting that a development review staff "was dispatched to conduct an onsite review" (even though the department is very short staffed and they do not usually do such on site review). It is, therefore, difficult to understand how the staff's on-site visit failed to detect the glaring and numerous discrepancies in Mr. Sutherland's drawings and submissions. A qualified staff who did an on-site visit would have easily noted that Mr. Sutherland had under-counted and under-reported measurements of tree girth and placement of trees on the subject property since providing accurate location, count and measurements (i.e. over 24 dbh) would have demonstrated that more than half the subject property is a wooded lot containing numerous specimen trees and a shared border area with one of the few remaining urban forests that is protected under the Forest Conservation and Forest Stand Delineation law.

**3. 100-year flood plain; intermittent stream; unsuitable soil for residential construction; land disturbing activity greater than a 25% slope:**

a. The following public information on the subject property is readily available to the staff for purposes of verifying the authenticity of Mr. Sutherland's drawings and submissions:

- ✓ FEMA maps show that more than a quarter of the subject property sits inside a 100-year flood plain.
- ✓ The Montgomery County Topographical map shows that the subject property sits in the path of a spring that is a tributary of nearby Booze Creek. Experts have confirmed that the spring in the back of the property is an intermittent stream, which serves as a critical rainwater repository required to sustain the Hillmead Park forested area, wildlife and possibly endangered species of plant life.
- ✓ Land and historical records show that the subject property has one of the oldest remaining houses in this area, that the property did not have water or sewer connections until the late 1940s, and that the house had an on-site well that drew from the aquatic basin linked to the spring (which was active at the time rather than intermittent) in the back of the property.
- ✓ The Montgomery County Soil Survey map shows that the subject property - sits on the hilltop of highly erodible soil - 6A and 16D - that is unsuitable for residential construction as defined by the USDA's Montgomery County, Maryland Soil Survey.

b. The report notes that a certain Environmental Planning Division staff e-mail stated that "Since it is a re-subdivision with steep slopes, I believe we can make a very strong case that a 4 lot re-subdivision does not meet the 'suitability for residential use' criteria because it would require a storm water management waiver to created the four lots." The investigators conclude that this

e-mail – which contradicted the final staff report on the subject application – was due to staff confusion and that “there is no evidence of undue influence that made staff change its conclusion.”

c. While a storm water concept plan was submitted by the subject applicant, the investigators did not take note that a senior planning specialist from the Department of Public Works and Transportation requested, but never received, a complete analysis of the capacity of the downstream public storm system, the impact of the post-development runoff on the system, and an impact analysis of the post-development ten (10) year storm runoff.

d. The report does not state findings to explain final staff report conclusions that there is no stream in the back of the property or that soil is suitable for residential construction, which as noted above is contradictory to public information records on the subject property.

e. On the issue of slope calculations:

- ✓ The report notes that “the Staff Report states the slope on the subject property is 24%” and that “the subdivision regulations and environmental guidelines allow the Board to take greater protection of land that meets or exceeds the 25% threshold.”
- ✓ While the investigators agree that the “staff reports contain erroneous details, omit pertinent facts, and do not clearly spell out residents’ concerns,” no evidence is established by the investigators as to why conclusions are reached by the staff that cannot have any rationale other than to avoid the mandates of subdivision regulations and environmental guidelines.
- ✓ In this case, compliance with the appropriate regulations and mandates means to designate a greater portion of the subject property to environmental buffers.
- ✓ While a grading plan had been noted by subject applicant in memos to staff, no grading plan was included in the public records or as an attachment to the final staff report on the subject application.
- ✓ The Investigators findings as to a “deliberate effort” on the part of the subject applicant or staff, is again, limited due to reasons stated above.
- ✓ To the best of our knowledge, the investigators do not have expertise in slope calculations.
- ✓ The report, however, notes that “there is inadequate discussion of the support for the findings and conclusions made in the staff report with regard to the slopes.”

e. On the flood plain issue, again, the final staff report conclusion is contradictory to the public information on subject property. However, the investigators:

- ✓ absolve M-NCPPC staff from knowledge or review responsibility on this issue citing to the fact that this is the jurisdiction of the Department of Permitting Services.
- ✓ failed to note that Mr. Rick Wolters, a Compliance Specialist from the Maryland Department of the Environment, conducted an on-site visit and that Mr. Wolters' findings contradict the final staff report conclusions. Mr. Wolters certified that a significant portion of the subject property falls inside the path of a 100-year flood plain.

Of course, as has been the pattern in staff conclusions regarding the subject application, compliance with the appropriate regulations and mandates means to designate a greater portion of the subject property to environmental buffers and may also necessitate an engineered storm water management plan. We note that **as of the date of this letter**, there has not been an on-site visit conducted by a FEMA official.

### **3. Improper interaction and undue influence**

- a. The report correctly notes that the public records room is not always operating as efficiently as it should. But moving a paper based system to an electronic system will not remedy the fact that there is non-transparent information exchange where the public remains at a disadvantage. The non-transparent information exchange is also providing an invisible and seamless team between the development review staff and department of permitting services staff, where again the public is at a disadvantage.
- b. The investigators do not have the capability or tools to establish improper interaction between staff and applicant or staff and Planning Board members or applicant and Planning Board members.
- c. The report in a foot note indicates that "Ms. Elise Cary is married to a Commission staff member who works for the Department of Planning." According to the investigators, this staff member (i.e. Mr. Steve Cary) had no direct involvement in the subject application. We, again note that the investigators do not have the capabilities or tools to establish improper interaction between Staff and the Applicant.
- d. The investigators determined that there was no undue influence by applicant on staff evaluation of a County acquisition of subject property with funding from the "Legacy Open Space" acquisition program. The investigators, however, failed to note that one reason for the staff decision against such a purchase may have been that the property value is too high and the concurrent public benefits (in the staff's opinion) do not justify the price tag. The property value cited in the staff report -

\$3.25 million – is not public information. There is no known public appraisal of this property for that value. The price cited is the amount offered by a developer to the subject applicant in a contract contingent on the approval by the Board of the preliminary plans for a 4-lot subdivision. The name of the developer, the contract price, terms, and conditions, have been closely guarded by the subject applicant and the attorney for the subject applicant.

e. Whereas the investigators do not find any evidence of improper contact between staff and the Applicant, the investigators suggest that draft Staff Report and/or the proposed conditions had been shared with the Applicant and the Applicant's representative. We can assure you that draft Staff Report and/or proposed conditions had not been shared with us. In fact, the community did not have notice of the pending application for more than a year after the original filings on the subject application. The public also did not have a copy of the staff report for a full day after it was posted in a buried web link.

DUE TO THE FOREGOING, WE DO NOT BELIEVE THAT THE REPORT IS A RELIABLE AND ACCURATE FACT FINDING STUDY. WE DO NOT BELIEVE THAT THE INVESTIGATORS HAD THE CAPABILITY OR TOOLS AVAILABLE TO CONDUCT A THOROUGH INVESTIGATION OF THE SUBJECT CASE. WE DO NOT BELIEVE THAT THE INVESTIGATION WAS CONDUCTED IN AN INDEPENDENT MANNER.

WE BELIEVE THAT THE ALLEGATIONS MADE ARE VERY SERIOUS, HAVE NOT BEEN REMEDIED AS OF THE DATE OF THIS LETTER, AND THAT THE REPORT DOES NOT PROVIDE THE BOARD WITH A BASIS FOR INFORMED DECISION-MAKING ON THE SUBJECT CASE.

Before the Board can consider the findings and recommendations in the report on its merits, we strongly urge an independent audit of the report by an office such as the Office of the Inspector General.

We understand from the report that many of the concerns we have expressed were also raised by other reports (i.e. noted in the report as the Management Partners Report and the OLO Report). As long term residents of Bethesda, we very much appreciate that the Board, under your leadership, will be evaluating ways to remedy the systemic problems in the development review process. However, such recommendations, regardless of their merit, that merely postpone regulatory action to a future date do little to address the potentially irreparable adverse consequences the subject subdivision plan will have to a community park that is the crown jewel of the Hillmead neighborhood. Moreover, we do not believe that

tightening up regulatory oversight or automating the process alone will remedy a development review process that many residents see as dysfunctional. We do not view current regulations and laws as problematic. What we would like to see is meaningful enforcement of these laws and regulations with actionable financial and, even criminal penalties.

We are available to meet with you on this matter at your convenience.

Thank you for your kind consideration.

Respectfully,

Sue Ghosh Stricklett

Harriet Kuhn

**CC:**

Montgomery County Planning Board Members:  
Wendy Purdue, John Robinson, Allison Bryant, Meredith Wellington  
Council Member Howard Denis  
Council Member Isaiah Leggett  
Inspector General Thomas Dagley  
Dolores Milmo. Audubon Society  
Diane Cameron, Storm Water Management Coalition Partners  
Wayne Goldstein, Montgomery Civic Federation  
Caren Madsen, Forest Conservation Task Force  
Bette Petrides, Citizens for a Better Bethesda  
Steve Dryden, Friends of Rock Creek Park



October 3, 2006

**BY TELECOPIER AND HAND DELIVERY**

Ms. Rose Krasnow  
Ms. Catherine Conlon  
Mr. Richard Weaver  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**RE: Phyllis Piotrow Hillmead Property/Preliminary Plan No.  
120060480**

Dear Ms. Krasnow, Ms. Conlon and Mr. Weaver:

Our firm represents Phyllis Piotrow, the Applicant for Preliminary Plan of Subdivision No. 120060480. On May 4, 2006, the Montgomery County Planning Board (the "Board") conducted a public hearing on the application and thereafter granted the Applicant's request to defer the application. The deferral was granted so that the Applicant could address technical comments raised by certain opponents of the plan and so that the Board also could order an investigation of certain allegations raised at the hearing. The Applicant has spent the last four months thoroughly addressing every technical issue raised at the hearing and, as such, is submitting a revised preliminary plan, a revised preliminary grading plan, a revised NRI/FSD and Tree Save Plan and other related materials.

At the hearing, the following issues were raised regarding the Preliminary Plan and related plans:

1. The accuracy of the NRI/FSD and the Tree Save Plan.
2. The existence of any wetlands on-site.
3. The presence of a stream on the property.
4. Rare, threatened or endangered species on the property
5. Location of floodplain on the property.

Rose Krasnow  
Catherine Conlon  
Richard Weaver  
October 3, 2006  
Page 2

6. Slopes and soils.
7. Lot configuration.

The Applicant met with the opposition after the hearing to discuss these technical issues. We made the commitment to the opposition and Technical Staff that we would fully evaluate every issue raised at the hearing and make absolutely certain that the information presented at the next hearing was accurate and complete, even if that meant revising the plans. The Applicant implemented the following action plan:

1. The NRI/FSD and the Tree Save Plan. The Applicant retained Don Zimar of Zimar & Associates, Inc. ("Zimar") to evaluate the NRI/FSD and Tree Save Plan submitted by the Applicant and approved by Technical Staff. Mr. Zimar also was requested to evaluate the allegations raised by the opposition and their arborist, Keith Pitchford, regarding those plans as well as compliance with the Forest Conservation laws. Mr. Zimar prepared a letter dated September 21, 2006, responding to the opposition and fully addressing every issue related to the above referenced plans, including but not limited to the appropriateness of the exemption to the Forest Conservation Laws. The letter and Mr. Zimar's resume are attached to this correspondence.

Applicant's Finding/Action: Mr. Zimar generally concluded that the NRI/FSD and Tree Save Plan were accurate, complete and worthy of Staff approval. There were certain non-material typographical errors and a few misidentified trees on the plan as cited by the opposition. Mr. Zimar prepared a revised Tree Save Plan to clarify any inconsistencies. In addition, the survey was expanded to include any trees that may have been missed and any tree on adjacent parkland that could have critical root zone impact. Zimar also prepared a revised NRI/FSD to reflect the modified floodplain as discussed below.

- 2-4. The Existence of Wetlands, Steams and/or Rare, Threatened or Endangered Species. The Applicant retained the services of Jim Morris of Ecotone, Inc. ("Ecotone"), to evaluate the environmental setting and existence of natural

Rose Krasnow  
Catherine Conlon  
Richard Weaver  
October 3, 2006  
Page 3

resources on and immediately adjacent to the Applicant's property. Specifically, Mr. Morris' investigation addressed issues including: the presence and extent of nontidal wetlands; the presence of perennial or intermittent streams and/or buffers and forest and tree resources on-site; the presence of rare, threatened or endangered species; and the compliance with the Forest Conservation Laws. Mr. Morris also evaluated the letter submitted by Russell Arrington, an M-NCPPC park manager, to Chairman Berlage dated May 18, 2006, regarding the property. A copy of Mr. Morris' letter dated September 19, 2006, along with his resume, is attached to this correspondence.

Applicant's Findings/Action: Mr. Morris confirmed that there are no wetland's on-site or adjacent thereto. Mr. Morris further confirmed that there are no perennial or intermittent streams on the property. He also confirmed there are no perennial or intermittent streams on or adjacent to the property that would trigger the County's stream valley buffer requirements. Lastly, he confirmed that there are no rare, threatened or endangered species on or around the property. Mr. Morris concluded that Staff made the appropriate determination in granting an exemption to the Forest Conservation Laws and that the application complies with all Environmental Guidelines. Finally, Mr. Morris exposed the numerous incorrect statements offered by Mr. Arrington in his letter.

5. The Existence of Floodplain. The Applicant retained the services of Vika, Inc. ("Vika"), a civil engineering firm to evaluate the existence of floodplain on the property. At the request of the Department of Permitting Services, the Applicant's engineer, Lee Sutherland, prepared a floodplain analysis as part of the original application. This analysis was reviewed and approved by DPS and identified a portion of the property on Lot 105 as floodplain. At the hearing, the opposition indicated that the floodplain on the property, as reflected on the FEMA map, was more extensive than that identified by the Applicant and approved by DPS.

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Page 4

Applicant's Findings/Action: The Applicant's experts agree that the FEMA map did reflect a more extensive floodplain on the property than what was depicted. However, the Applicant's experts were also of the opinion that while the FEMA map accurately reflected floodplain elevations, it did not accurately reflect the topography on-site or in the immediate area. As a result the FEMA map depicted a more expansive floodplain than what physically exists at the site. Thus, Vika petitioned FEMA to revise the floodplain map and submitted detailed documentation proving that the FEMA map was inaccurate and in need of revision. FEMA issued a "Letter of Map Revision Floodway Determination Document (Removal)" on August 24, 2006. This letter evidences the official revision to the FEMA map and thus identifies the floodplain limits on the property – floodplain only on a portion of Lot 105. The FEMA designated floodplain is more extensive than that identified on the original NRI/FSD but less than that identified by the original FEMA map. As a result, the Applicant has resubmitted the NRI/FSD so that it accurately depicts the floodplain as certified by FEMA. A copy of the FEMA determination also is being included as part of this submission.

The Applicant notes that Vika evaluated the property during the period of extremely heavy rains in late June 2006 and incorporated its observations in its FEMA analysis. Vika confirms that the FEMA map correction is accurate and, in fact, is at a higher elevation than the debris line observed on site.

6. Soils and Slopes. At the hearing, the opposition questioned whether the property's soil and slope characteristics could support residential construction.

Applicant's Findings/Action: Vika, Mr. Sutherland, Zimar and Ecotone all reviewed the property's soil characteristics and slopes. Each of the experts concluded that there are no hydric soils on the property. Vika reviewed the Preliminary Plan that is being submitted herein and concluded that the soils and slopes would not prevent the development of a dwelling unit on any of

Rose Krasnow  
Catherine Conlon  
Richard Weaver  
October 3, 2006  
Page 5

the lots, particularly Lot 105. There are many properties in the Hillmead neighborhood that have slopes equal to or greater than Lot 105 and have successfully been build upon. The Applicant's experts all agree that, with proper mitigation measures, Lot 105 is a buildable lot.

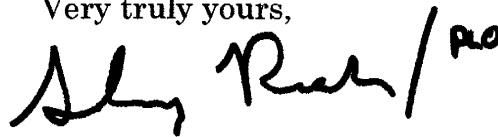
7. Lot Configuration/Preliminary Plan. As a result of the FEMA determination, the Applicant made limited revisions to the Preliminary Plan and the Preliminary Grading Plan so that Lot 105 could be reconfigured to reflect the floodplain determination and still result in a buildable lot. We are including these revised plans as part of this submission and the accompanying resubdivision analysis (for purposes of satisfying the resubdivision criteria). The revised Preliminary Plan and Preliminary Grading Plan were prepared by Lee Sutherland under the direct supervision and responsible charge of Nelu Schwartz, a registered professional engineer that Mr. Sutherland has worked with for over 30 years. Mr. Schwartz has signed the revised plans. Note that Mr. Schwartz signed one copy of each plan (*i.e.*, the Preliminary Plan and the Preliminary Grading Plan) for this submission – all other copies are derived from plan mylars, which Mr. Schwartz also signed. The Preliminary Plan and Preliminary Grading Plan also were thoroughly reviewed by Mark Morelock, P.E. of Vika in order to ensure the accuracy of the submission.

As previously stated, the Applicant committed to Staff and the opposition that we would make certain that every technical comment raised at the hearing was thoroughly evaluated and that modifications to the plan would be made, if necessary. The Applicant has made good on this promise and the plan that has been resubmitted fully addresses all of the comments and concerns raised at the hearing. We look forward to presenting the plan to the Board at the earliest possible hearing date. Many months have passed since the last hearing and Ms Piotrow is most anxious to close this chapter of her life. We certainly will be available to discuss the revised plan and answer any questions, particularly since, as you will recall, the Applicant was not afforded an opportunity to rebut the opposition's testimony at the last hearing.

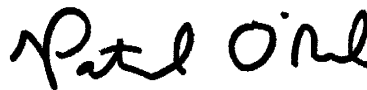
Rose Krasnow  
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October 3, 2006  
Page 6

On behalf of Ms. Piotrow, we thank you in advance for your consideration regarding this matter. Please let us know if you need any additional information or copies of the plans. We also will send the individuals required to be notified a copy of the revised Preliminary Plan.

Very truly yours,

Handwritten signature of Steven A. Robins, with a stylized 'R' and a slash followed by 'RO'.

Steven A. Robins

Handwritten signature of Patrick L. O'Neil, in a cursive script.

Patrick L. O'Neil

cc: Phyllis Piotrow  
Faroll Hamer  
Candy Bunnag  
Amy Lindsay  
Debra Daniel, Esquire  
Tariq el Baba, Esquire  
Don Zimar  
Mark Morelock  
Lee Sutherland  
Jim Morris  
Parties of Record  
Patrick L. O'Neil, Esquire



Attachment

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

Robert C. Hubbard  
Director

March 13, 2006

Mr. Lee Sutherland  
Sutherland  
13938 Layhill Road  
Silver Spring, MD 20906

Re: Stormwater Management **CONCEPT** Request  
for Hillmead/Bradley Hills  
Preliminary Plan #: 1-2006048  
SM File #: 220656  
Tract Size/Zone: 1.35ac./R-60  
Total Concept Area: 1.35ac.  
Lots/Block: Parts 5, 7&8  
Parcel(s): N/A  
Watershed: Cabin John Creek

Dear Mr. Sutherland:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is acceptable. The stormwater management concept consists of on-site water quality control utilizing multiple treatment methods. Stormwater management will be provided for Lots 102 and 103 by using drywells for the roof top and infiltration for the driveways. Stormwater management will be provided for Lots 104 and 105 by using a proprietary roof drainage system (Rainhandler) or an approved equivalent. The driveways will be controlled by using a permeable paver system. Recharge is also provided via the previously mentioned methods. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following conditions will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. The Rainhandler system is being approved because other types of water quality will not be effective due to the steep slopes on proposed lots 104 and 105. The Rainhandler system will be visually monitored to check its dispersion capabilities.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.



This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Blair Lough at 240-777-6335.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dm bli

cc: C. Conlon  
S. Federline  
SM File # 220656

QN -not required: Acres: 1.35  
QL - on-site: Acres: 1.35  
Recharge is provided





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## FIRE MARSHAL COMMENTS

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DATE: 2-24-06  
TO: PLANNING BOARD, MONTGOMERY COUNTY  
VIA:  
FROM: CAPTAIN JOHN FEISSNER 240.777.2436  
RE: APPROVAL OF ~ HILLMEAD/BRADLEY HILLS #1-2006048 (REVISED 2-10-06)

---

### 1. PLAN APPROVED.

- a. Review based only upon information contained on the plan submitted 2-24-06. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
- b. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

Please note: Revision shows one driveway for each home. F.D. access does not apply

Mr. Sutherland, Please ensure Cathy Colon with MNCPPC is provided a copy of this changed access plan. The date on the Preliminary Plan is Aug. 05 and there is no revision date on this plan.

cc: Department of Permitting Services

12/11/2005

1

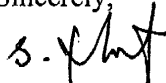


Ms. Catherine Conlon  
Preliminary Plan No. 1-20060480  
Date February 9, 2006  
Page 3

- C. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- D. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [sam.farhadi@montgomerycountymd.gov](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist  
Traffic Safety Investigations and Planning Team  
Traffic Engineering and Operations Section

m:/subdivision/farhas01/preliminary plans/1-20060480,Hillmead\_Bradley Hills .doc

Enclosures (2)

cc: Lee Sutherland, Sutherland Associates  
Steve Robins, Lerch, Early and Brewer  
Phyllis Piotrow  
Joseph Y. Cheung; DPS RWPPR  
Christina Contreras; DPS RWPPR  
Sarah Navid; DPS RWPPR  
Shahriar Etemadi; M-NCPPC TP  
Gregory Leck, Manager, DPWT TSIPT

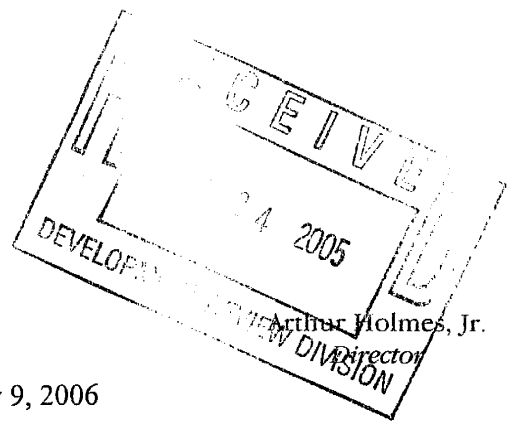




DEPARTMENT OF PUBLIC WORKS  
AND TRANSPORTATION

Douglas M. Duncan  
County Executive

February 9, 2006



Ms. Catherine Conlon, Subdivision Supervisor  
Development Review Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-20060480  
Hillmead/Bradley Hills Grove

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated 8/20/05. This plan was reviewed by the Development Review Committee at its meeting on 11/21/05. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Show all existing planimetric and topographic details specifically storm drainage, driveways adjacent and opposite the site and sidewalks on the preliminary plan.
2. Necessary dedication for Ridge Road and Valley drive and a standard truncation at the intersection of aforementioned streets.
3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
4. We did not receive complete analyses of the capacity of the downstream public storm system(s) and the impact of the post-development runoff on the system(s). As a result, we are unable to offer comments on the need for possible improvements to the system(s) by this applicant. Prior to approval of the record plat by the Department of Permitting Services (DPS), the applicant's consultant will need to submit this study, with computations, for review and approval by DPS. Analyze the capacity of the existing downstream public storm drain system and the impact of the post-development ten (10) year storm runoff on same. If the proposed subdivision drains to an existing closed section street, include spread and inlet efficiency computations in the impact analysis.



Division of Operations

Ms. Catherine Conlon  
Preliminary Plan No. 1-20060480  
Date February 9, 2006  
Page 2

5. The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.
6. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
7. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
8. In accordance with Section 49-35(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision.
9. In accordance with Section 50-35(n) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to construct an off-site sidewalk along Valley Road to connect with Bradley Boulevard.
10. The owner will be required to furnish this office with a recorded covenant whereby said owner agrees to pay a prorata share for the future construction or reconstruction of Ridge Road and Valley Drive, whether built as a Montgomery County project or by private developer under permit, prior to DPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
11. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
12. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Fred Lees of our Traffic Control and Lighting Engineering Team at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
13. Trees in the County rights of way - species and spacing to be in accordance with the applicable DPWT standards. A tree planting permit is required from the Maryland Department of Natural Resources, State Forester's Office [(301) 854-6060], to plant trees within the public right of way.
14. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
  - A. Construct four (4) foot wide concrete sidewalk along the frontage of the site.
  - B. Improvements to the existing public storm drainage system, if necessitated by the previously mentioned outstanding storm drain study. If the improvements are to be maintained by Montgomery County, they will need to be designed and constructed in accordance with the DPWT Storm Drain Design Criteria.

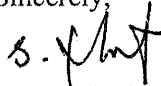
(47)

Ms. Catherine Conlon  
Preliminary Plan No. 1-20060480  
Date February 9, 2006  
Page 3

- C. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- D. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [sam.farhadi@montgomerycountymd.gov](mailto:sam.farhadi@montgomerycountymd.gov) or (240) 777-6000.

Sincerely,



Sam Farhadi, P.E., Senior Planning Specialist  
Traffic Safety Investigations and Planning Team  
Traffic Engineering and Operations Section

m:/subdivision/farhas01/preliminary plans/1-20060480,Hillmead\_Bradley Hills .doc

Enclosures (2)

cc: Lee Sutherland, Sutherland Associates  
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Christina Contreras; DPS RWPPR  
Sarah Navid; DPS RWPPR  
Shahriar Etemadi; M-NCPPC TP  
Gregory Leck, Manager, DPWT TSIPT

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Attachment 2

October 19, 2006

Royce Hansen  
Chairman  
Montgomery County Planning Board  
Montgomery County Department of Park and Planning  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

RECEIVED  
1398  
OCT 24 2006

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

RE: Hickey-Jackson Investigative Report

Dear Mr. Hansen:

I am writing on behalf of Citizens for a Better Bethesda to support the Friends of Hillmead Park in their objections to the Hickey-Jackson report on re-subdivision case #120060480.

The Hickey-Jackson report spells out some of the issues needing consideration on page 11, "Among other things the [Management Partners'] report noted that staff reports often contain erroneous details, omit pertinent facts, and do not clearly spell out residents' concerns." That finding alone should make further review of the Hillmead Park complaints necessary. Additional concerns about the impartiality of the report itself would suggest such remedy is mandatory.

The Hickey-Jackson report does not adequately respond to the issues raised by the Friends of Hillmead Park's, but rather excuses Park and Planning employees from responsibility because the systemic improvements required by the Clarksburg report have not yet been made. While one can sympathize with the staff, clearly the multiple infractions that did occur in Hillmead Park need to be addressed, rather than dismissed.

I urge that the Board act to immediately remedy the Hillmead situation or seek assessment by a third party that can provide an impartial review and a satisfactory solution to the issues raised by the Friends of Hillmead Park.

Thank you.

Sincerely,

*Bette Petrides*

Bette Petrides  
Citizens for a Better Bethesda

Cc: Planning Board Members Wendy Perdue, Allison Bryant, John Robinson, Meredith Wellington  
Council Member Howard Denis  
Sue Ghosh Stricklett, Harriet Kuhn, Friends of Hillmead Park  
Wayne Goldstein, Montgomery Civic Federation

(49)