

MCPB
ITEM #
12/11/08

MEMORANDUM

DATE: September 19, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Development Review Division

FROM: Catherine Conlon, Supervisor (301) 495-4542
Development Review Division

SUBJECT: Request for an extension of the validity period – Preliminary Plan
No. 120050570, Lake Potomac

STAFF RECOMMENDATION: Approval of an eight-month extension of the validity period to April 9, 2009.

BACKGROUND

The preliminary plan for Lake Potomac was approved by the Planning Board on May 25, 2005. The date of mailing of the Planning Board Opinion for the plan was July 6, 2005. Under the conditions of that approval the validity period of the preliminary plan was set at 37 months from the date of mailing of the Planning Board Opinion, or August 6, 2008 (Attachment A). On August 5, 2008 staff received a request for an extension of the validity period for an additional two years (Attachment B). The request was therefore, timely, as it was received prior to the date of expiration, and the plan remains valid pending the Board's decision.

REQUIRED FINDINGS FOR AN EXTENSION OF THE VALIDITY PERIOD

Section 50-35 (h)(3)(d) of the Montgomery County Code, Subdivision Regulations, states that the Planning Board may grant extension of the validity period of a preliminary plan if persuaded that:

- (i) Delays, subsequent to the plan approval by the government or some other party, central to the applicant's ability to perform the terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or
- (ii) the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by the applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.

Applicant's Position

The applicant's letter of August 6, 2008, as supplemented by a follow-up letter on October 20, 2008 (Attachments B and C), requests a two-year extension for the validity period of the preliminary plan. The applicant cites a delay in obtaining required sign-off on the record plats from the Department of Permitting Services (DPS) as the reason the record plat has not been recorded within the original validity period. Specifically, the applicant cites an approximately 4-month delay that occurred in the processing of the record plat by DPS because they were waiting for confirmation from staff in the Department of Environmental Protection (DEP) that the property was in the correct sewer category. Although DEP participated in the original review of the preliminary plan, they did not realize until after the record plat had been submitted that the County's service area map contained an error that placed the subject property in the wrong sewer service category. Determining that the map was in error resulted in a delay in their sign-off to DPS on the pending plat. The applicant also cites his inability to find a buyer for the property and bank lender issues as further reasons the plat recordation was delayed.

Staff's Position

In staff's opinion, the applicant has submitted sufficient grounds to justify a short extension of the validity period for the subject preliminary plan, but not for the requested two years. Staff agrees that it took DEP an unusual amount of time to resolve the confusion over the sewer service category of the property. This 4-month delay was not created by the applicant and did prevent an agency sign-off that is needed in order for the plat to be recorded. To give the applicant back the time lost because of this delay, staff supports an extension of the preliminary plan validity until April 6, 2009. This amounts to an 8-month extension from the original expiration date, and provides approximately 4 months to complete the pending record plat review and recordation process.

In staff's opinion, there is no justification for a longer preliminary plan extension because most of the delay that kept the plat from being recorded was caused by the applicant. The applicant made a decision not to submit the record plats for the first two

plus years of the validity period based on marketing of the property. Since it was not necessary to sell the lots in order to record them, that decision created an unnecessary delay that, once the record plat application was submitted in September, 2007, limited the available processing time to 11 months. This timeframe would have been sufficient if not for the delay caused by the confusion over the sewer service category, so staff supports giving the applicant that time back.

CONCLUSION

In staff's opinion, a short-term extension of the validity period for preliminary plan 120050570, Lake Potomac is justified. There was an approximately 4-month governmental delay during the processing of the plat application that prevented the plat from being recorded prior to the expiration of the original validity period. Staff concludes that this delay justifies giving the applicant an additional four months from the public hearing on the extension request to record the plats. Therefore, staff recommends extending the preliminary plan validity period for eight months to April 6, 2009.

Attachments

Attachment A – Approved Opinion
Attachments B and C – Extension Request Letters
Attachment D – Approved Preliminary Plan



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed: JUL - 6 2005
Hearing Date: May 12, 2005
Action: Approved Staff Recommendation
Motion of Commissioner Robinson, seconded by Commissioner Wellington, with a vote of 3-0; Commissioners Bryant, Robinson, and Wellington voting in favor. Chairman Berlage and Commissioner Perdue absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05057
NAME OF PLAN: Lake Potomac (Resubdivision)

The date of this written opinion is JUL - 6 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

INTRODUCTION

On 12/3/04, Christopher Bogdan ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2 zone. The application proposed to create 2 lots on 4.12 acres of land located at on the east side of Lake Potomac Drive approximately 600 feet northeast of River Road (MD 190), in the Potomac Subregion Master Plan area ("Subject Property"). The application was designated Preliminary Plan 1-05057 ("Preliminary Plan"). On 5/12/05, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

SITE DESCRIPTION

The Subject Property consists of 4.12 acres of land comprised of two unplatted parcels, two parts of previously recorded lots, and a recorded outlot. The Subject Property is located on the east side of Lake Potomac Drive, approximately 600 feet northeast of River Road (MD 190) and is zoned RE-2. A residential dwelling with accessory uses including a pool, tennis court and sheds exists on the site.

The Subject Property drains to the Watts Branch stream valley (Use Classification I-P) within the existing M-NCPPC Watts Branch Stream Valley Park, which abuts the property to the north, east and south. The existing WSSC Potomac Water Filtration facility is located on the south side of River Road near the site. The Subject Property contains numerous mature trees and shrubs throughout the site. Stream buffers are present on both the northeast and southwest portions of the site. There is a small forest at the southern end of the property.

PROJECT DESCRIPTION

This is an application to resubdivide the 4.12 acre subject property into two residential lots. The Applicant proposes to create a 2.01 acre (87,400 square feet) lot with 52,830 square feet of developable area ("Proposed Lot 38") and a 2.03 acre (88,400 square feet) lot with 36,800 square feet of developable area ("Proposed Lot 39"). The Applicant proposes retention of the existing dwelling and pool on Proposed Lot 38, and removal of the existing tennis court and construction of a new one-family detached dwelling on Proposed Lot 39.

MASTER PLAN COMPLIANCE

The Potomac Subregion Master Plan ("Master Plan") does not specifically identify the Subject Property for discussion but does give general guidance and recommendations regarding zoning and land use. The Mater Plan recommends that this area maintain the 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 residential development and is consistent with the Zoning Ordinance development standards for the RE-2 zone.

FOREST CONSERVATION

There are 0.36 acres of existing forest on the Subject Property. This small forest adjoins a larger forest on adjacent park property. There are also numerous specimen trees throughout the site. Most of the specimen trees are in good condition. The Applicant is proposing to retain all existing onsite forest, however, there will be an afforestation requirement. The Applicant has proposed to meet this requirement through planting of unforested stream buffers and protection of critical root zones of specimen trees outside the stream buffer. The stream buffers will be protected with a Category I conservation easement. A Category II conservation easement will be placed over the remaining portions of the lots to protect individual specimen trees, which are being credited toward afforestation requirements. Split rail fencing is also being required along the stream buffers to help delineate and protect the existing and newly planted forest area.

The Subject Property also includes stream buffers on both the northeastern and southwestern portions of the site. These areas will be protected by Category I conservation easements and replanted as discussed above.

CONFORMANCE WITH SECTION 50-29(b)(2)

A. Statutory Review Criteria

In order to approve an application for Resubdivision, the Planning Board must find that the proposed lots comply with all seven of the criteria set forth in Section 50-29(b)(2) of the Subdivision Regulations ("Resubdivision Criteria"), 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

In administering the Resubdivision Criteria, the Planning Board must determine the appropriate neighborhood for evaluating the application. The delineated neighborhood for the purposes of evaluating the proposed Preliminary Plan consists of 16 lots as set forth in Staff's report dated May 6, 2005 ("Staff Report"). The lots included

in the neighborhood share frontage with the Subject Property on Lake Potomac Drive, and share the same RE-2 zoning. The existing parts of lots and unrecorded parcels, which comprise the existing parkland surrounding the subject property, were not included in the neighborhood delineation.

Staff found this neighborhood delineation appropriate because it provides an adequate sample that exemplifies the lot and development pattern of the area. A tabular summary of the area based on the Resubdivision Criteria is set forth in the Staff Report.

STAFF ANALYSIS OF THE RESUBDIVISION CRITERIA

Staff concluded that the proposed lots fall within the neighborhood ranges for the Resubdivision Criteria and are of the same character with respect to the Resubdivision Criteria as other lots within the defined neighborhood. Therefore, Staff concluded that the proposed resubdivision complies with the criteria of Section 50-29(b)(2). As set forth below, the tabular summary and graphical documentation set forth in the Staff Report support this conclusion:

Frontage: The existing lots range in frontage from 25 feet to 501 feet. Proposed Lot 38 as a lot frontage of 397 feet, and proposed Lot 39 has a frontage of 75 feet. The proposed lots are within the range of lot frontages in the neighborhood. In Staff's opinion, the proposed lots will be of the same character as existing lots in the neighborhood with respect to lot frontage.

Alignment: Both Lots 38 and 39 will be perpendicular in alignment. There are 11 other perpendicular lots in the neighborhood and 5 radial aligned lots. The proposed lots will be in character with the existing lots with respect to the alignment criterion.

Size: The existing lots range in size from 52,651 square feet to 123,572 square feet. Proposed Lot 38 will be 87,400 square feet (2.01 acres) and Lot 39 will be 88,400 square feet (2.03 acres). The proposed lots will fall within the range of lot sizes in the neighborhood and will be in character with the existing lots with respect to size.

Shape: Proposed Lot 38 and Lot 39 will both have irregular shapes. The neighborhood consists of 12 irregularly shaped lots and 4 pipestem lots. Therefore, the shapes of the proposed lots are in character with shapes of the existing lots.

Width: The existing lots range in width from 120 feet to 500 feet. Proposed Lot 38 will have a lot width of 330 feet and Lot 39, 150 feet. The proposed lots will be in character with existing lots in the neighborhood with respect to width.

Area: Lot areas in the neighborhood range from 16,600 square feet to 79,500 square feet. Proposed Lots 38 and 39, with areas of 52,830 square feet and 36,800 square feet, respectively, will be within the range of areas for other lots in the neighborhood.

Therefore, staff finds the proposed lots to be of the same character as other lots in the neighborhood with respect to area.

Suitability for Residential Use: Staff found that the existing lots and the proposed lots in the neighborhood are zoned residential and are of the same character with respect to suitability for residential use.

STAFF RECOMMENDATION

Staff found that the proposed lots satisfy the requirements of the Resubdivision Criteria and all other applicable provisions of Chapter 50 of the Montgomery County Code ("Subdivision Regulations") and recommended approval of the Preliminary Plan with conditions of approval.

PLANNING BOARD HEARING

At the hearing, Staff introduced the proposed development and property location and described the delineated neighborhood. Staff recommended approval of the Preliminary Plan with conditions.

A representative of the Applicant testified that the Applicant agreed with all of the conditions recommended by Staff. No other speakers testified at the hearing.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that, with the conditions of approval:

- a) The Preliminary Plan No. 1-05057 substantially conforms to the Potomac Subregion Master Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The proposed lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood. In making this finding, the Planning Board expressly adopts the findings of Staff as set forth above.
- g) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05057 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05057, subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to two (2) residential dwelling units.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan, including construction of split rail fences to delineate the Category I forest conservation easement areas. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 4) Record plat to reflect a Category II forest conservation easement to protect individual trees over the entire property outside the Category I forest conservation easement.
- 5) Record plat to reflect common ingress/egress and utility easements over all shared driveways.

- 6) Compliance with the conditions of approval of the MCDPS stormwater management approval dated March 28, 2005.
- 7) Compliance with the conditions of the MCDPWT letter dated March 11, 2005 unless otherwise amended.
- 8) Applicant shall dedicate to M-NCPPC a strip of land along the northeast side of the property, at least 10 feet in width, beginning at the point where the existing driveway enters the property from current parkland and continuing southeast to the eastern-most corner of the property. Land to be conveyed at time of record plat and be free of trash and unnatural debris.
- 9) Applicant shall adequately stake or fence the park boundary along the northeastern border of the subject property. Adequate signage shall be provided to identify the parkland.
- 10) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

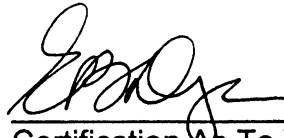
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

AS TO LEGAL SUFFICIENCY
070 6/16/05
DEPARTMENT

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, June 23, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Lake Potomac, Preliminary Plan No. 1-05057. Commissioners Berlage and Perdue abstained.



Certification As To Vote of Adoption
Technical Writer



Dean Packard, P.E.

August 5, 2008

Ms. Cathy Conlon
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Lake Potomac
Extension of Preliminary Plan
#1-05057

Dear Cathy:

I have been working with the owner, Chris Bogdan for some time on this property. For two years he tried to sell the property and could not find an acceptable asking price. Last September, I was requested to begin processing the record plat for approval and recording. We submitted the plat, received comments and began processing for approval and recording. There was some time delay in receiving approval from the bank lender holding the lien on the property since my client was changing lenders.

I was then contacted by the Department of Environmental Protection (DEP) to inform me that the property was in the wrong category for sewer. I had a hard time believing this because the preliminary plan had been approved and somehow this significant detail had not been brought to yours or my attention. I brought this to Alan Soukup's attention and he said that he would look into it. After several discussions and the threat of the pending expiration of the preliminary plan, Alan recently sent you an email saying that the S-6 category was an error and would be corrected the next time the plans were updated.

Per our discussion, you told me to file an extension request prior to August 6, 2008. My client has been away until this week and I received the filing check today.

Given the delays in obtaining approval of the record plat and the current market condition for sale of the lot, I hereby request the maximum extension time allowable under the first extension rules.

Sincerely,
PG ASSOCIATES, INC.

Dean Packard, PE
President

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PG ASSOCIATES, INC.
16220 Frederick Road
Suite 300
Gaithersburg, MD 20877
(301) 208-0250

October 20, 2008

Re: Lake Potomac
Preliminary Plan 120050570

Dear Cathy:

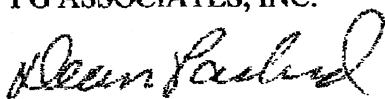
I received your email yesterday and I hope the following information will complete the file to extend the permit. Last April, I was pressing to have the reviews at the DPS finished and I received a call from Shelly, Alan Soukup's assistant, on or about April 15, 2008. She told me that she could not continue reviewing the record plat because it was in the wrong sewer category. I researched my filed and called Alan on or about April 22, 2008. I spoke with Alan and told him that the preliminary plan was approved and this was the first notice that I had regarding the property being in the wrong category. He told me he was concern that something has slipped through the cracks and he would look into is as soon as possible. I called Alan, weekly to followup this issue and left him messages. About once a month I spoke to him directly and he said he was very busy and apologized for not getting back to me. He said again that he would look into it and notify me as to the status as soon as possible.

This continued until my last call to him on or about July the 15th. I spoke with Alan and pleaded with him to give me an answer. I told him that the preliminary plan was going to expire soon and I needed to know whether or not if I had to file for a category change before I applied for the extension. Alan finally sent me an email on July 24, 2008 stating that the category of S-6 was a mapping error that will be corrected to S-1 at the next update.

Any delay by my client ended in April which is when I moved forward with trying to complete the approvals for the record plat. This left plenty of time to record the plat before the preliminary plan expired.

I hope this is the information you need to recommend extension of the preliminary plan. If you have any questions or require any additional information to complete this request, please contact me at once.

Sincerely,
PG ASSOCIATES, INC.



Dean Packard, PE
President

Dean Packard

From: Soukup, Alan [Alan.Soukup@montgomerycountymd.gov]
Sent: Thursday, July 24, 2008 9:24 AM
To: catherine.conlon@mncppc-mc.org
Cc: Katherine.Nelson@mncppc-mc.org; Federline, Steve; pRobins1@wssc.dst.md.us; LTapia@wsscwater.com; Youmans, Alicia; von Gunten, Gene; pgai@verizon.net
Subject: FW: Lake Potomac - 220080250 / 120050570

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

7/24/08

Good morning, Cathy -

This is to follow up on a situation that Dean Packard, PG Assoc., brought to our attention.

By this e-mail memo, I am **confirming that the use of public sewer service for preliminary plan no. 120050570, Lake Potomac, is consistent with the county's Water and Sewer Plan.** Although shown as category S-6 for many years now, we have confirmed with WSSC that the property in question, at 11489 Lake Potomac Dr., is now – and has been since at least 1997 – connected to public sewer service. The S-6 category is a category mapping error and will be corrected to S-1 in our next general service area map update.

I apologize for the error and the confusion that it caused. Please let me know if you have any questions concerning this case.

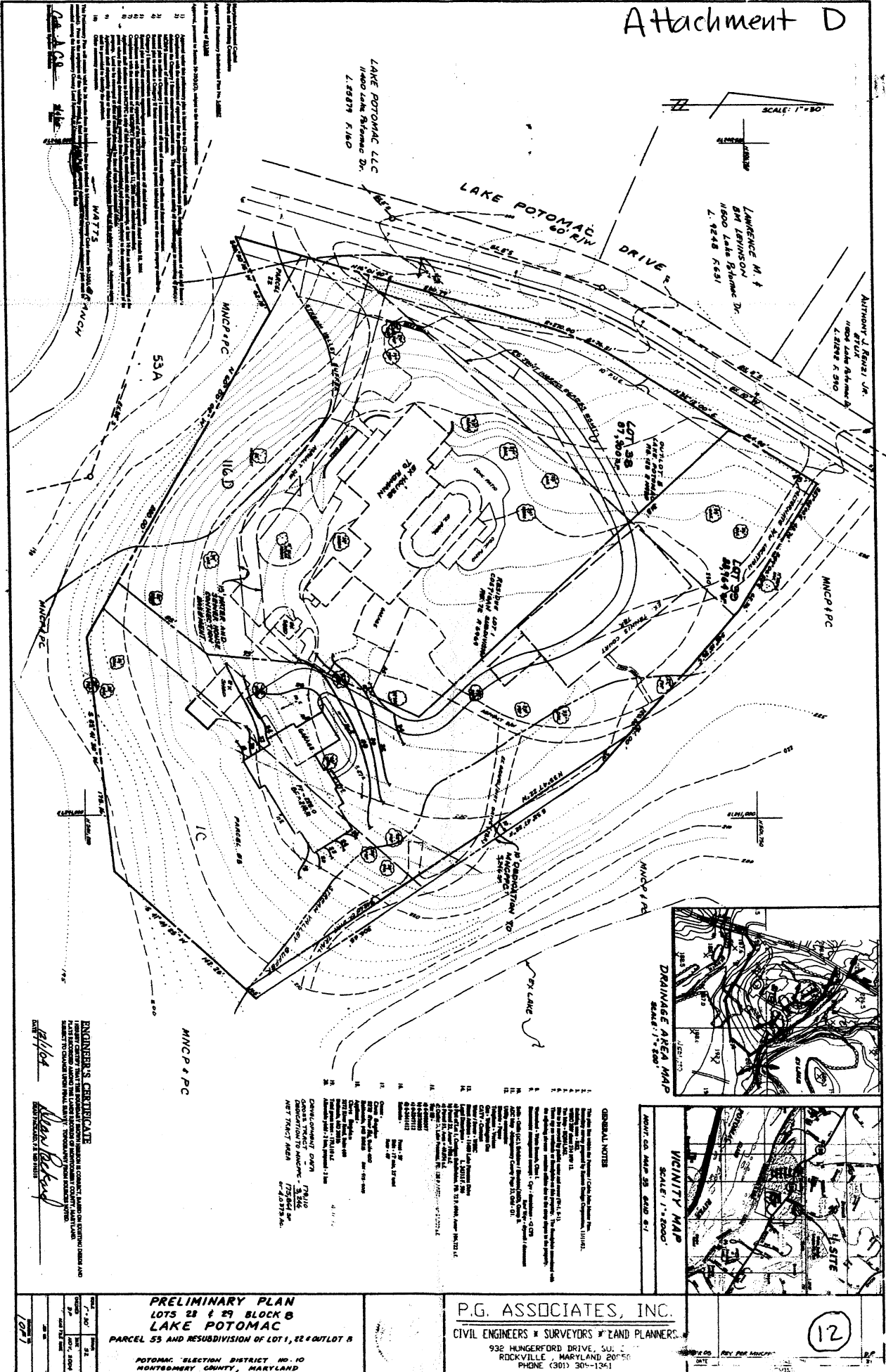
Thanks, Alan
DEP-WWPG
240-777-7716

-----Original Message-----

From: dean packard [mailto:pgai@verizon.net]
Sent: Thursday, July 17, 2008 5:40 PM
To: Soukup, Alan
Subject: Lake Potomac - 220080250 / 120050570

Alan, I spoke with Cathy Conlon. My preliminary plan is getting ready to expire in two weeks and I need to file for an extension. I told her that we have had conversations about the property being in the wrong sewer category but I have been waiting some time for you to research the file. She is very upset over the possibility that the plan was approved with the wrong sewer category and what the board is going to say. She wants a memo from you as to the status of the category. She is going to go through her file tomorrow looking for the referrals and start to prepare a report. I don't know what to tell her without hearing from you.

Dean Packard



SCALE: 1"=50'

DRAINAGE AREA MAP
SCALE: 1"=500'

VICINITY MAP
SCALE: 1"=5000'

ENGINEER'S CERTIFICATE
I, the undersigned, being a duly Licensed Professional Engineer in the State of Maryland, do hereby certify that the preliminary plan shown in connection with the foregoing plans and specifications was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer in the State of Maryland.

[Signature]
MATT'S

GENERAL NOTES

1. The site plan is based on the 1988 aerial photograph.
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20. The site plan is based on the 1988 aerial photograph.

PRELIMINARY PLAN
LOTS 22 & 29 BLOCK B
LAKE POTOMAC
PARCEL 55 AND RESUBDIVISION OF LOT 1, 22 & OUTLOT B

P.G. ASSOCIATES, INC.
CIVIL ENGINEERS * SURVEYORS * LAND PLANNERS
932 HUNGERFORD DRIVE, SU. 201
ROCKVILLE, MARYLAND 20850
PHONE (301) 306-1341

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DATE	NO.	BY
10/21	1	MATT'S
10/21	2	MATT'S
10/21	3	MATT'S
10/21	4	MATT'S
10/21	5	MATT'S

POTOMAC ELECTION DISTRICT NO. 10
MONTGOMERY COUNTY, MARYLAND