



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
11/19/09
Item #5



MEMORANDUM

DATE: November 5, 2009

TO: Montgomery County Planning Board

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

FROM: Richard A. Weaver, Coordinator (301-495-4544) *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: Two (2) lots for two (2) one family detached dwellings and an unplatted parcel.

PROJECT NAME: Potomac Estates

CASE #: 120090390

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT

LOCATION: On the east side of Montevideo Road, approximately 150 feet east of Sugarland Road.

MASTER PLAN: Agricultural and Rural Open Space

APPLICANT: Potomac Estates Corporation

ENGINEER: N/A

ATTORNEY: Petra Engineering, L.L.C.

FILING DATE: May 5, 2009

HEARING DATE: November 19, 2009

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to two lots for two dwelling units.
- 2) The applicant must comply with all conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County issuance of sediment and erosion control permit(s), as appropriate. Conditions include but are not limited to:
 - a. Category I conservation easements must be placed over all planted and retained forest as shown on the preliminary forest conservation plan.
 - b. The easement area to be protected with split rail fencing, or other staff approved equivalent, to prohibit damage from grazing livestock or encroachment by farm equipment.
- 3) The applicant must dedicate and the record plat must show dedication of 40 feet from the centerline (80 ft. right-of-way) along the property frontage for Montevideo Road.
- 4) The record plat must reflect a Category I easement over all areas of forest conservation.
- 5) Prior to recordation of the plat(s), the Applicant must record an easement on the balance of the Property noting that density and TDR's have been utilized for the two lots. Reference to this easement must be reflected on the record plat.
- 6) The applicant must comply with the conditions of the MCDPS stormwater management approval dated April 23, 2009, and as revised September 21, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 7) The applicant must comply with the conditions of the MCDPS, Wells and Septic Section approval dated November 2, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 8) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 14, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 9) The final Certified Preliminary Plan and record plat must show a cistern easement as approved by the Montgomery County Fire and Rescue Services.
- 10) The applicant must satisfy provisions for access and improvements as required by MCDOT and the Rustic Roads Advisory Committee prior to recordation of plat.
- 11) Record plat to reference an appropriate easement on lot to allow vehicular and farm machinery access to the unplatted remainder of Property.
- 12) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 13) Other necessary easements must be shown on the record plat.

SITE DESCRIPTION (Figure 1)

The subject property (Property" or "Subject Property") is 73 acres in size and is zoned RDT. It is located on the east side of Montevideo Road approximately 150 feet east of Sugarland Road and abuts the Seneca Creek State Park to the east. The Property is vacant except

for a number of agricultural buildings that provide shelter for livestock. Horses are currently kept on the property. Uses surrounding the site are generally agricultural although a small neighborhood of newer and older homes exists along the frontage of Montevideo Road. Montevideo Road is an exceptional rustic road; however, no scenic vistas have been identified in the Rustic Roads Functional Plan that affect the Subject Property.

The Property is within the Great Seneca Creek Watershed, a Use I-P stream. The Subject property lies within 1100 feet of the confluence of the Great Seneca Creek with the Potomac River. There is a single unnamed tributary stream to Great Seneca Creek that crosses the northeastern portions of the Property. No significant forest exists on site as most of it has remained cleared for agricultural purposes.

PROJECT DESCRIPTION and DISCUSSION (Figure 2)

The preliminary plan proposes two lots, one at 3.6 acres and the other at 46.5 acres, each using sand mound systems. The use of sand mounds for both lots is necessary because standard trench testing for septic systems failed due to high groundwater and rock. The house on the 46.5 acre lot (Lot 12) on the south side of the site will utilize an existing driveway that follows a hedgerow along the southern property line of the site. The driveway served a former house on the Property that was recently removed. The 3.6 acre lot (Lot 13) will require construction of a new driveway that bisects the Property to access the lot from the eastern boundary. Lot 13 will have frontage on Montevideo Road by virtue of a pipestem along this driveway. The remaining 21.7 acres of the site will remain unplatted. Since the density on this 73.0 acre parent tract will be exhausted by the two lot subdivision, no further subdivision can be achieved on the property.¹

The house locations have been situated to minimize impact to the ongoing agricultural operations and to minimize visual impacts to the exceptional rustic road. The house on Lot 12 is generally located in a shielded location up against a hedgerow, in a corner of open field adjacent to a stream valley buffer, and it utilizes an existing driveway. The house on Lot 12 will replace a house that previously existed in the stream valley buffer immediately east of the proposed house location. Evidently, there was an effort to rehabilitate the former house because sand mound locations were approved in anticipation for an eventual building permit. Now that the house has been removed, the new house will use those same sand mound approvals.

Lot 13 is located in an area that, while currently in agriculture, is also removed from Montevideo Road to the periphery of usable agricultural land abutting State parkland. Each lot has three approved sand mound locations with one sand mound to be used as the initial field; the other two sand mounds are backup locations should the initial field(s) fail. All wells and sand mound fields are located on the respective lots which they serve. With regard to location of Lot 13 lot location, irrespective of the sewage disposal method approved, staff believes them to be optimally located on this Property.

¹ Further subdivision would require a minimum of 3.7 acres to be added to the 21.7 acre parcel and the availability of a TDR.

POTOMAC ESTATES (120090390)



Figure 1

Vicinity Aerial

“Support of a rural sanitation policy that does not encourage development within the critical mass of active farmland” (Summary of Findings and Recommendations, p. iv).

The population holding capacity within the Agricultural Preservation Study Area is governed, to a large extent, by the suitability of land to support septic systems as regulated by the Montgomery County Department of Environmental Protection. This policy results in a population holding capacity that is less than the zone’s population. This ‘perc’ policy is one of the most significant in limiting population density within the Study Area.

“Although the population holding capacity is limited by this policy, it is imperative to develop not only land-use recommendations for this area, but a comprehensive public policy regarding the private use of alternative individual or community sewerage systems outside the sewer envelope” (Agricultural Preservation Study Area Population Holding Capacity, p. 17).

“For those areas designated as the Agricultural Reserve, the Rural Density Transfer Zone (RDT) is recommended. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass” (p. 41).

“Deny public water and sewer service to areas designated for agricultural preservation that utilize the Rural Density Zone (RDT)” (Recommended Water and Sewerage Guidelines, p. 59).

“Deny private use of alternative individual and community systems in all areas designated for the Rural Density Transfer Zone (RDT)” (Recommended Water and Sewerage Guidelines, p. 62).

Master Plan Discussion

This subdivision presents certain difficult policy issues, and is potentially precedent-setting. The language in the last sentence above from the 1980 Master Plan is unequivocal. At the time of the adoption of the Functional Master Plan, sand mounds were not a conventional septic system. However, in 1986, Maryland regulations amended the definition of sand mound systems from ‘alternative’ to ‘conventional.’

Montgomery County did not permit sand mounds as a ‘conventional’ system until Executive Regulations were amended in 1994. During the initial administration of the Executive Regulations, sand mounds were the option of last resort. An applicant had to demonstrate that a trench system was infeasible before a sand mound system would be considered. Now there are no limitations on sand mounds other than the physical requirements for a workable system.

As of October 30, 2009, the Planning Board has approved 189 preliminary plans of subdivision in the RDT zone since October 1980, the date of adoption of the Master Plan. 21 of the subdivisions were for non-residential use. The 168 residential subdivisions contained 664 lots and 6 of these subdivisions relied upon sand mound systems either wholly or in part.

On March 12, 2007, the Planning Board recommended to the County Council that all alternative technologies to trench systems should be prohibited in the Agricultural Reserve (RDT Zone) with the following exceptions to this policy for parcels existing as of December 1, 2006.

1. Where there was an existing house and the sand mound would not result in the development of an additional house.
2. When it enabled a property owner with approved deep trench system percs to better locate houses to preserve agriculture.
3. For child lots which met the Board's recommendations, and where they were approved under an Agricultural Easement Program (MALPF/AEP.)
4. For bona fide tenant housing. Sand mounds would be approved for bona fide tenant housing if the dwelling could never be conveyed from the parent parcel.
5. For any pre-existing parcel that was defined as an exempted lot or parcel in the zoning regulations.
6. For any permitted agricultural use under the zoning regulations (e.g., farm market).
7. For the purpose of qualifying for a State or County easement program.

One of the recommended exceptions (No. 5 above) is applicable to the current proposal. Existing parcel 050 is a grandfathered parcel that pre-existed the Master Plan. A dwelling house, which was previously located in a stream valley buffer, has been demolished. It is reasonable to assume that the previous septic field, which had its own easement, would not meet current standards. New Lot 12 therefore replaces Parcel 050, incorporates its area, moves a dwelling out of the stream valley buffer, uses the same existing driveway to minimize impervious surface, and replaces a deficient septic system with a system which will improve water quality. Lot 12 is 42.93 acres in size, with a proposed agricultural declaration of intent. (3.6 acres is excluded, including a panhandle access, for residential use and a yard.) This comports with a draft zoning text amendment on Lot Area Limitations discussed with the Board earlier this year.

Master Plan Conclusions

Between 1997 and 2005, the Planning Board approved subdivisions with sand mounds. The Ad Hoc Agricultural Policy Working Group has recommended their continued use, subject to certain limits. The subdivision comports with these limits. In 2007, the Planning Board recommended that sand mounds be prohibited subject to certain exceptions. One of the proposed subdivision lots meets one of the Board's criteria for an exception. The other does not, although it could be argued that it partially meets the Board's second criterion – it is best located to preserve agriculture, but does not possess an approved deep trench system 'perc.'

The history of the sand mound issue renders this a difficult decision and a close call. The County Council has not ruled on the differing 2007 recommendations of the Ad Hoc Agricultural Policy Working Group and the Planning Board. A definitive ruling would remove a certain policy vacuum on the issue. Without benefit of this ruling, and, given the totality of the circumstances, staff believes that the plan substantially complies with the recommendations of the AROS master plan.

Public Facilities

Roads and Transportation Facilities

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. Right-of-ways will be dedicated to the full width required for rustic roads (35 ft. from centerline), and no improvements other than a new driveway apron is proposed within the public right-of-way. Sidewalks are not supported nor required in the RDT; development densities in the Agricultural Reserve generate little pedestrian traffic. Local roads may be used in these instances to safely accommodate pedestrians. Staff finds that proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public Facilities and Services

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles but that an easement must be created to provide an area to construct a water supply cistern in the future should the County establish a policy for them. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The application is not within a school moratorium area; and is not subject to payment of School Facilities Payment. Both Verizon and PEPCO have reviewed this plan to determine if their respective utility can adequately serve the proposed development. Both utility providers have found that utilities are adequate. Washington Gas does not serve this area of the County. Staff finds that the lots created by this application will be adequately served by all public and private utilities and services.

Environment

Forest Conservation

Staff finds that the plan meets all applicable requirements of the county Forest Conservation Law, Chapter 22A. Of the 73.0 acre farm, 64.33 acres will remain in agriculture and be exempted from forest conservation requirements through a staff- approved agricultural Declaration of Intent (DOI). After removing 1.17 acres of road dedication from the remaining 64.33 acre tract, a net tract area of 7.5 acres remains and is subject to the law. The forest conservation requirement on the 7.5 acre net tract equals 1.5 acres. To meet this requirement, the Preliminary Forest Conservation Plan shows protection of the 2.39 acre forest and 0.305 acres of afforestation which is to be protected in a Category I easement. This easement will be on the farm remainder. Since the farm will remain unplatted the conservation easement will be recorded by deed. Staff has recommended as a condition of approval that the easement area be protected with split rail fencing, or staff approved equivalent, to prohibit damage from grazing livestock or encroachment by farm equipment

With the approval of preliminary forest conservation plan No. 120090390, the final forest conservation plan SC2009003, Potomac Estates Parcel 50, will be superseded. The final forest

conservation plan for this sediment control permit was apparently filed to address the clearing and grading necessary to replace the previous house on the Subject Property. As noted above, that house was razed under a demolition permit and will not be rebuilt in that location. In general, the forest conservation law does not apply to demolition permits due to the small area of disturbance (<5000sf).

Environmental Guidelines

The farm from which the two proposed lots are to be created does contain a stream and associated stream valley buffer. Since the Applicant proposes to continue agriculture uses on the remainder farm, a Declaration of Intent (DOI) has been approved by staff to allow continuation of agriculture. However, a portion of the stream valley buffer as discussed above will be protected with a Category I easement to meet the forest conservation requirements for the two lots.

Stormwater Management

The Montgomery County Department of Permitting Services (MCDPS) has approved a stormwater management concept to address runoff as required under Chapter 19 of the County Code. The concept requires quality control of runoff through non-structural methods. No quantity control is required because runoff volumes do not exceed 2.0 cubic feet per second. Chapter 50 requires that the stormwater management concept plan be approved by MCDPS prior to Planning Board action on a preliminary plan. Therefore, staff finds that stormwater management requirements are adequately addressed.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm. Access and circulation for vehicles, emergency equipment and pedestrians has also been found by staff to be adequate. Since the Property fronts an exceptional rustic road, street improvements are minimal and will be limited to a small area where the new driveway for Lot 13 will need to be constructed in accordance with the Rustic Roads Advisory Committee recommendations. The Plan has also been found to comply with Chapter 22A and adequately protects forest and environmentally sensitive feature on the lots.

The lots were reviewed for compliance with the dimensional requirements for the RDT 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 whom have recommended approval of the plan.

Citizen Correspondence and Issues

The Applicant properly noticed adjacent and confronting property owners as well as local civic associations and held a presubmission meeting on March 24, 2009. Nine citizens attended the meeting held at Poolesville High School. Staff believes that all issues raised at the meeting have been addressed by the Applicant. One point of some confusion was that some citizens believed that one of the lots was being created under the child lot provisions of 59-C-9.74, which carries with it certain ownership requirements. None of the lots on the plan are proposed as 59-C-9.74 child lots, although the Applicant professes that both lots will eventually be owned by his children, there are no restrictions on ownership as would be required under the child lot provision.

No other correspondence has been received by staff on this application. Citizen concerns have been adequately addressed by the proposed plan, or with the recommended changes.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and, in staff's opinion, comply with the recommendations of the AROS Master Plan. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

Attachment A – CPB staff report

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Potomac Estates				
Plan Number: 120090390				
Zoning: RDT				
# of Lots: 2				
# of Outlots: 2				
Dev. Type: Residential/Agricultural				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	3.6 acres. minimum	RW	11/6/09
Lot Width	150 ft.	400 ft. minimum	RW	11/6/09
Lot Frontage	25 ft.	25 ft. minimum	RW	11/6/09
Setbacks			RW	11/6/09
Front	50 ft. Min.	Must meet minimum ¹	RW	11/6/09
Side	20 ft. Min./ 40 ft. total	Must meet minimum ¹	RW	11/6/09
Rear	35 ft. Min.	Must meet minimum ¹	RW	11/6/09
Height	50 ft. Max.	May not exceed maximum ¹	RW	11/6/09
Max Resid'l d.u. per Zoning	2	2	RW	11/6/09
MPDUs	N/A		RW	11/6/09
TDRs	N/A		RW	11/6/09
Site Plan Req'd?	No		RW	11/6/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	RW		11/6/09
Road dedication and frontage improvements	Yes	Agency letter		7/14/09
Environmental Guidelines	Yes	Staff memo		11/6/09
Forest Conservation	Yes	Staff memo		11/6/09
Master Plan Compliance	Yes	Staff memo		10/30/09
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Agency letter		9/12/09
Water and Sewer (WSSC)	N/A	Agency comments		7/13/09
10-yr Water and Sewer Plan Compliance	Yes	Agency comments		7/13/09
Well and Septic	Yes	Agency letter		11/2/09
Local Area Traffic Review	N/A	Staff memo		7/13/09
Policy Area Mobility Review	N/A	Staff memo		7/13/09
Transportation Management Agreement	No	Staff memo		7/13/09
School Cluster in Moratorium?	No	RW		7/13/09
School Facilities Payment	No	RW		7/13/09
Fire and Rescue	Yes	Agency letter		7/13/09
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

October 30, 2009

MEMORANDUM

To: Cathy Conlon and Richard Weaver
Development Review Division

From: Callum Murray, Team Leader, Potomac and Rural Area (301-495-4733)
Community-Based Planning Division (**Original initialed**)

Subject: Preliminary Plan 120090390 Potomac Estates RDT Zone
Master Plan for the Preservation of Agriculture and Rural Open Space

RECOMMENDATION

Community-Based Planning staff recommends approval.

SUMMARY

The 73- acre Potomac Estates property is located in the Rural Density Transfer (RDT) Zone in the Agricultural Reserve on Montevideo Road, an Exceptional Rustic Road. The applicant proposes the construction of two single family dwellings to be served by private wells and sand mound septic systems together with one out-lot.

MASTER PLAN LANGUAGE

Two master plans guide the development of this property: the Functional Master Plan for the Preservation of Agriculture and Rural Open Space (AROS) and the Rustic Roads Functional Master Plan (RRFMP). Excerpts from AROS appear below in the order of their appearance in the master plan.

Functional Master Plan for the Preservation of Agricultural and Rural Open Space (AROS, 1980)

"This Plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County" (p. i, emphasis original). This property falls within the southwestern portion of the master plan area.

"This Plan recommends..."

- *"Preservation of critical masses of farmland..."*
- *"Applications of incentives and regulations to preserve farmland and... to encourage agricultural use of the land."*
- *"Application of specific innovative preservation techniques such as the Rural Density Transfer Zone..."*
- *"Support of a rural sanitation policy that does not encourage development within the critical mass of active farmland" (Summary of Findings and*

Recommendations, p. iv).

The population holding capacity within the Agricultural Preservation Study Area is governed, to a large extent, by the suitability of land to support septic systems as regulated by the Montgomery County Department of Environmental Protection. This policy results in a population holding capacity that is less than the zone's population. This 'perc' policy is one of the most significant in limiting population density within the Study Area.

"Although the population holding capacity is limited by this policy, it is imperative to develop not only land-use recommendations for this area, but a comprehensive public policy regarding the private use of alternative individual or community sewerage systems outside the sewer envelope" (Agricultural Preservation Study Area Population Holding Capacity, p. 17).

"For those areas designated as the Agricultural Reserve, the Rural Density Transfer Zone (RDT) is recommended. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass" (p. 41, emphasis original).

"Deny public water and sewer service to areas designated for agricultural preservation that utilize the Rural Density Zone (RDT)" (Recommended Water and Sewerage Guidelines, p. 59, emphasis original).

"Deny private use of alternative individual and community systems in all areas designated for the Rural Density Transfer Zone (RDT)" (Recommended Water and Sewerage Guidelines, p. 62, emphasis original).

DISCUSSION

This subdivision presents certain difficult policy issues, and is potentially precedent-setting. The language in the last sentence above from the 1980 Master Plan is unequivocal. At the time of the adoption of the Functional Master Plan, sand mounds were not a conventional septic system. However, in 1986, Maryland regulations amended the definition of sand mound systems from 'alternative' to 'conventional.'

Montgomery County did not permit sand mounds as a 'conventional' system until executive regulations were amended in 1994. During the initial administration of the executive regulations, sand mounds were the option of last resort. An applicant had to demonstrate that a trench system was infeasible before a sand mound system would be considered. Now there are no limitations on sand mounds other than the physical requirements for a workable system.

107 sand mound systems have been approved by the County in various zones, of which 83 are in the RDT Zone. (51 of those are not associated with a preliminary plan of subdivision.) As of October 30, 2009, the Planning Board has approved 189 preliminary plans of subdivision in the RDT zone since October 1980, the date of adoption of the Master Plan. 21 of the subdivisions were for non-residential use. The 168 residential subdivisions contained 664 lots and 6 of these subdivisions relied upon sand mound systems either wholly or in part.

The following subdivisions created 32 single-family lots that could be platted using sand mounds:

Chadwick Property,	1997	7 lots	1 sand mound.
Edward's Ferry Property	2001	7 lots	7 sand mounds.
Kinzie Property	2004	4 lots	4 sand mounds.
Stoney Springs	2005	15 lots	15 sand mounds.
			(Upheld on appeal in 2006)
Butz Property	2005	3 lots	3 sand mounds.
Hunter Property	2005	2 lots	2 sand mounds.

Sand mound systems are allowed on exempt lots and parcels that do not need to go through the subdivision process (e.g., tenant houses, existing structures, and existing lots). These are not counted in the subdivision numbers.

In January 2007, the Ad Hoc Agricultural Policy Working Group appointed by the County Council recognized that in some cases the use of sand mound technology may be appropriate, and recommended that the County continue to permit sand mounds, but limit their potential use. There was a majority and minority opinion.

The Working Group's majority proposal would allow one sand mound per 25 acres for the first 75 acres, then one for each 50 acres thereafter. The minority recommended one mound per 50 acres. All agreed on their use (or other alternative technologies to deep trenches) for failing systems, tenant homes on a common lot, and to locate a residence on poorer soils to protect better agricultural soils.

The Working Group's recommendations were as follows:

"We recommend one sand mound per 25 acres be permitted for the first 75 acres. Beyond that, one sand mound should be allowed for every 50 acres of land. We further recommend that these numerical standards apply to any future new technology for on-site sewage disposal. For any subdivision involving sand mounds, we recommend Planning Department staff be required to determine whether the subdivision minimizes fragmentation of agricultural land by locating buildings to preserve viable farmland."

The Potomac Estates subdivision comports with the majority recommendation.

On March 12, 2007, the Planning Board recommended to the County Council that all alternative technologies to trench systems should be prohibited in the Agricultural Reserve (RDT Zone) with the following exceptions to this policy for parcels existing as of December 1, 2006.

1. Where there was an existing house and the sand mound would not result in the development of an additional house.
2. When it enabled a property owner with approved deep trench system percs to better locate houses to preserve agriculture.
3. For child lots which met the Board's recommendations, and where they were approved under an Agricultural Easement Program (MALPF/AEP.)
4. For bona fide tenant housing. Sand mounds would be approved for bona fide tenant housing if the dwelling could never be conveyed from the parent parcel.

5. For any pre-existing parcel that was defined as an exempted lot or parcel in the zoning regulations.
6. For any permitted agricultural use under the zoning regulations (e.g., farm market).
7. For the purpose of qualifying for a State or County easement program.

One of the recommended exceptions (No. 5 above) is applicable to the current proposal. Existing parcel 050 is a grandfathered parcel that pre-existed the Master Plan. A dwelling house, which was previously located in a stream valley buffer, has been demolished. It is reasonable to assume that the previous septic field, which had its own easement, would not meet current standards. New Lot 12 therefore replaces Parcel 050, incorporates its area, moves a dwelling out of the stream valley buffer, uses the same existing driveway to minimize impervious surface, and replaces a deficient septic system with a system which will improve water quality. Lot 12 is 42.93 acres in size, with a proposed agricultural declaration of intent. (3.6 acres is excluded, including a panhandle access, for residential use and a yard.) This comports with a draft zoning text amendment on Lot Area Limitations discussed with the Board earlier this year.

The applicant has worked with staff and made a good faith effort to keep the size of residential Lot 13 to the minimum and to preserve the maximum size of the area for agriculture. (64.63 acres). The whole property has a high water table, will not perc for traditional deep trench septic systems, and locations for sand mounds are constrained. Flag Lot 13 is 3.6 acres in size (and would be approximately 3 acres but for the acreage of the stem.) The proposed subdivision meets the spirit of the draft Zoning Text Amendment for Area Limitations currently being discussed with the Agricultural community.

The subdivision preserves approximately almost 65 acres for agriculture in perpetuity. The owners of the abutting 2-acre Lot 9 (not part of this subdivision) at 15121 Montevideo Road have agreed to purchase the 21.7 acre out-lot and continue its use as pasture for horses.

CONCLUSION

Between 1997 and 2005, the Planning Board approved subdivisions with sand mounds. The Ad Hoc Agricultural Policy Working Group has recommended their continued use, subject to certain limits.

The basic issue facing the Working Group was as follows: Should sand mounds be regarded as "conventional" technology, equivalent to deep trench septic systems for purposes of serving residential development in the RDT Zone? Both the majority and minority of the Working Group have, by implication, answered in the negative. The majority would allow sand mounds to be used only on each additional 50 acres after one for each 25 acres of the first 75 acres. The minority would limit their use to one mound for each 50 acres. The issue, therefore, is not whether to restrict their use, but to what degree?

The subdivision comports with the limits proposed by the Working Group majority but not that of the minority.

In 2007, the Planning Board faced the same basic issue and recommended that sand mounds be prohibited subject to certain exceptions. The Board therefore agreed with

both the majority and minority of the Working Group that sand mound use could and should be restricted, but differed in the degree of restriction.

One of the proposed subdivision lots meets one of the Board's criteria. The other does not, although it could be argued that it partially meets the Board's second criterion – it is best located to preserve agriculture, but does not possess an approved deep trench system 'perc.'

In sum, the subdivision proposal meets the Ad Hoc Agricultural Policy Working Group majority criteria, but not that of the minority. One of the proposed lots meets the Planning Board's criteria. The other does not. The subdivision comports with the spirit of a draft zoning text amendment on Lot Area Limitations discussed with Board and the agricultural community, namely that agricultural lots be a minimum of 25 acres, and residential lots be a maximum of 3 acres. (Lot 13 would be 3 acres but for the 0.6 acre flag stem.)

The history of the sand mound issue renders this a difficult decision and a close call, with no unanimity among staff. The County Council has not ruled on the differing 2007 recommendations of the Ad Hoc Agricultural Policy Working Group and the Planning Board. A definitive ruling would provide clarity and remove a policy vacuum on the issue. Without benefit of this ruling, and, considering all of the circumstances, Community-Based Planning staff recommends approval to the subdivision.