

REVISED MEMORANDUM

TO: Montgomery County Planning Board

FROM: Carol Rubin, Associate General Counsel
301-495-4646

DATE: December 10, 2012
Revised December 17, 2012

RE: Remand of Memorandum Opinion and Order of the Circuit Court for Montgomery County, Maryland in *Hyde et al. v. The Montgomery County Planning Board* Civil Nos. 360249-V, 363941-V

- a. To approve Rural Open Space Easement;
- b. To approve Plat of Correction for Plat No. 220120830 that includes Parcel B, Block C (Formerly Parcel A) adding reference to the Rural Open Space Easement; and
- c. To adopt Resolution reaffirming the validity of the Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300.

On November 15, 2012, the Honorable Robert A. Greenberg, of the Circuit Court for Montgomery County, Maryland, issued a Memorandum Opinion and Order reversing the Planning Board's ~~February 9, 2012~~, approval of Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 on February 9, 2012, and the Board's approval of Plat No. 220120830 on May 31, 2012, for Pulte Home Corporation's development of the Batchellors Forest Subdivision. A copy of the Court's Memorandum Opinion and Order is attached to this memorandum as Attachment 1. The Circuit Court found that the rural open space covenant embedded within the Deed of Dedication did not comply with the requirement of perpetuity as embodied in §59-C-9.574(h)(4) of the Zoning Ordinance and remanded the matter to the Planning Board to take future action it deems appropriate to effect compliance.

RECOMMENDATION

Staff recommends the Planning Board take three actions indicated below to implement the Court's Order.

1. Approve a Rural Open Space Easement separate from the Deed of Dedication.

In 2007, to facilitate the post-approval process of implementing development plans involving rural open space ("ROS") in the RNC zone, the Planning Board approved a form Rural Open Space Easement for privately held ROS property and a Declaration of Rural Open Space Covenant for publicly held ROS property. Staff recommends the Board approve a Rural Open Space Easement to be granted from Pulte Home Corporation to The Maryland-National Capital Park and Planning Commission ("M-NCPPC") modeled after the 2007 form. ~~A draft of the proposed Rural Open Space Easement is attached to this memorandum as Attachment 2. (A revised Rural Open Space Easement is attached to this memorandum as Revised Attachment 2.)~~ Although Pulte has already dedicated the ROS property to M-NCPPC, Pulte continues to hold the underlying fee title. Therefore, the Rural Open Space Easement is an appropriate protective measure to comply with the requirement of perpetuity as embodied in §59-C-9.574(h)(4) of the Zoning Ordinance. Furthermore, the proposed Easement has been thoroughly vetted with the Petitioners in the *Hyde* case, and they ~~raise no objection to support use of the form. , in fact they prefer the form Easement as submitted for the Board's approval.~~

2. Approve Plat of Correction for Plat No. 220120830 that includes Parcel B, Block C (Formerly Parcel A) adding reference to the Rural Open Space Easement.

~~Although the Court did not reverse the Planning Board's approval of Plat No. 220120830, (the plat containing the property dedicated to M-NCPPC as ROS), r~~ Relevant language from Site Plan No. 82008019A, Condition No. 3 requires that reference to the recorded ROS easement be noted on the record plat(s). Therefore, Staff believes that the Plat No. 220120830, the record plat that previously referred to the ROS covenant within the Deed of Dedication must be corrected to reflect reference in the land records to the Rural Open Space Easement to be recorded in the land records. Staff has prepared a more detailed Staff Report addressing the specific issues and conditions related to the Plat of Correction, which is attached to this memorandum as Attachment 3.

3. Adopt Resolution reaffirming the validity of the Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300.

The Court reversed the Board's approval of Subdivision Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 on which Pulte is developing 37 single family homes. The Plats are attached to the memorandum as Attachment 4. ~~The Court did not reverse the Board's approval of Plat No. 220120830 for the dedicated parcel; however, the Court is concerned that density for development of the residential lots is dependent upon protection of the ROS on the dedicated parcel. Therefore,~~ Staff finds that no corrective action is necessary with regard to Subdivision Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 as recorded. Whereas, density for development of the residential lots is dependent upon protection of the ROS on the dedicated parcel, and

their validity may be reaffirmed upon approval of the Rural Open Space Easement and the Plat of Correction for the dedicated parcel.

ATTACHMENTS

Attachment 1 – Memorandum Opinion and Order of Court

Attachment 2 (REVISED) – Proposed Rural Open Space Easement

Attachment 3 – Plat of Correction and Staff Report recommending approval

Attachment 4 - Plats

Attachment 5 (REVISED) – Draft Resolution

ATTACHMENT 1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

THOMAS HYDE, ET AL. :
Petitioners :
v. : Case Nos. 360249-V ✓
363941-V
MONTGOMERY COUNTY :
PLANNING BOARD :
Respondent :
:

MEMORANDUM OPINION AND ORDER

This instant matter is an appeal of the Montgomery County Planning Board's ("Planning Board") decision to approve the record plat for the six plats that comprise the 94 acre Batchellors Forest Subdivision ("BFS") in Olney, Montgomery County, Maryland. Five plats were approved by the Planning Board at a public hearing on February 9, 2012, and are the subject of one action for judicial review (C.A. No. 360249-V). The second matter involves the approval of "Parcel A," a 17.4 acre portion of BFS, approved at another hearing on May 31, 2012 (Civil Action No. 363941-V). The appeals are interdependent; only because density was taken from Parcel A could the proposed construction of 37 residential units on the remaining tract be permitted.

By order of this court dated July 27, 2012, the two appeals have been consolidated. The court has reviewed the record of both proceedings, as well as memoranda submitted by the parties. Argument was heard by the court on September 21, 2012, and the matter was taken under advisement.

There is no dispute about the underlying factual issues that are the focus of these appeals. Petitioners' Memorandum, and Respondents' oppositions thereto, have thoroughly recounted the procedural history from which these appeals emanated. Accordingly, the court will not dwell at length on the facts any more than necessary to explain its ruling. All statutory references herein

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are to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code (2004), unless otherwise noted.

I. Background

Respondent Pulte Home Corporation ("Pulte") owns BFS. The subdivision is wholly classified in Montgomery County's Rural Neighborhood Cluster Zone ("RNC"), and is required by the Montgomery County Zoning Ordinance to include within its confines an area known as "Rural Open Space" ("ROS"). Among other goals, ROS is intended to facilitate the preservation of open land in the county, contiguous to residential developments.

BFS consists of two tracts, on either side of Batchellors Forest Road. Parcel A lies on the east side of the road, and the remainder of the subdivision is on the western side. ROS is to be scattered throughout the entire subdivision. On the western side, 37 residences are to be constructed, with ROS to be owned by the homeowners' association. The entire 17.4 acre tract is to be preserved as ROS, and dedicated to the Maryland-National Capital Parks and Planning Commission ("MNCPPC") for future development as a park, as recommended in the Olney Master Plan. The subdivision was approved pursuant to the optional method of development which, among other features, allows for a diversity of lot sizes.

Section 59-C-9.574(h)(4) (hereinafter "(h)(4)") states: "All publicly held or privately held land in the rural open space area must be preserved in perpetuity as rural open space by application of an easement or covenant *in a recordable form approved by the Planning Board*" (italics supplied). In reference to the language italicized above, Debra Yerg Daniel, Esq., associate general counsel to MNCPPC, of which the Planning Board is a component, recommended to the Board by memorandum dated June 8, 2007, that it approve and utilize a Form Declaration of Rural Open Space Covenant ("Form Declaration") for public rural open

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space, “[i]n order to facilitate the post-approval process of optional method development plans involving rural open space in the RNC zone”

At a meeting one week later, the Form Declaration suggested by Ms. Daniel was approved by the Planning Board. However, the approved language was not utilized to establish the covenant required in the instant case. Instead, the Planning Board approved a “Deed of Dedication,” which, among other things, contained the following language: “Further, Grantor, by this dedication, does hereby declare and establish a real covenant on the Property to preserve it as rural open space in perpetuity as required by § 59-C-9.574(h) of the zoning ordinance.” There is disagreement among the parties as to whether the italicized language in (h)(4) *requires* utilization of the Form Declaration in transactions such as the one presented here, or is simply advisory.

According to MNCPPC’s counsel Carol S. Rubin, the Deed of Dedication was prepared because it was more convenient to use a single land use instrument, rather than two. At oral argument, she said the Planning Board “didn’t feel it was necessary” to have two separate documents, and that this case represented the first instance where an instrument was prepared for “managed” ROS. *See* Montgomery County, Md., Code § 59-C-9.57 (2004). Petitioners claim that the Deed of Dedication is not in compliance with the zoning ordinance, in that it does not ensure that Parcel A will remain rural open space in perpetuity. It is averred that such a deed is nothing more than a common law easement, consisting of a dominant and servient tenement, which is subject to the merger doctrine. As Pulte retains ownership of the fee title to Parcel A, it can donate or sell its interest to MNCPPC in the future, thereby extinguishing the covenant. This would be in derogation of the zoning ordinance at issue.

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inferences from the facts as well.” *Id.* at 59, 548 A.2d at 826 (citing *St. Leonard Shores Joint Venture. v. Supervisor*, 307 Md. 441, 447, 514 A.2d 1215, 1218 (1986)).

As to the Board's factual findings, a court must determine whether the issue before the administrative body is “fairly debatable,” that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. *Cinque v. Montgomery Cnty. Planning Bd.*, 173 Md. App. 349, 360, 918 A.2d 1254, 1260 (2007). In reviewing the board's legal conclusions, however, a court’s review is expansive, and is owed no deference. Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law. In reviewing for legal error, we “must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.” *Id.* at 360, 918 A.2d at 1261.

Even though this is the general rule, the Court of Appeals has held that “[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69, 729 A.2d 376, 381 (1999). Indeed, in this case, Respondents emphasize that “Petitioners’ arguments are based largely on interpretation of laws that the Planning Board is specially tasked with administering, matters on which the Board’s decision is entitled to deference from this Court.” *See Answering Mem. of the Resp’t Montgomery County Planning Board* 9-10.

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III. *Res judicata* / Statute of Limitations

Res judicata bars a second suit between the same parties and their privies if the identical cause of action has been finally decided on the merits in a prior action. *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 113, 494 A.2d 713, 716 (1985). Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency's decision. *Batson v. Shiflett*, 325 Md. 684, 702, 602 A.2d 1191, 1200 (1992). By conducting a hearing, allowing the parties to present evidence, and ruling on disputes of law, the agency acts in a judicial capacity. *Id.* at 705, 602 A.2d at 1202.

This court finds that the Planning Board did not act in a judicial capacity in approving the Preliminary or Site Plan herein, and therefore *res judicata* is inapplicable. In approving the plats, the Planning Board merely assured compliance with zoning and other applicable legal requirements, so that development could proceed. While it is true that it heard presentations from involved parties or their attorneys at the public hearing on February 9, no witnesses were sworn and no cross-examination occurred. After the presentations, a motion was made and passed. These were not the proceedings of an administrative agency acting in a judicial capacity.

The Respondent Planning Board, in its memorandum, cites *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 494 A.2d 713 (1985) to argue that Petitioners are barred by *res judicata* from raising the issue of use of the Deed of Dedication. In *Century*, appellant's second appeal was barred by *res judicata* because the circuit court's decision in the first appeal involved the same issues. That is distinct from the issue here, because it involved

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two appeals from *circuit court* decisions, not an appeal from an administrative agency to the circuit court.

Respondents also rely upon *Skipjack Cove Marina, Inc. v. Cnty. Comm'rs for Cecil Cnty.*, 252 Md. 440, 250 A.2d 260 (1969), to suggest that once an administrative body makes a decision, and the decision is not appealed, it cannot be challenged at a later time. In *Skipjack*, the Board of Zoning Appeals granted the property owner's predecessor in title a special exception to operate a marina on the property, subject to certain conditions precedent. *Id.* at 444, 250 A.2d at 262. This decision occurred after substantial evidence was presented to the Board at a hearing. *Id.* A written opinion was filed by the Board. *Id.* at 444, 250 A.2d at 263.

The predecessor did not appeal the board's decision. *Id.* at 445, 250 A.2d at 263. After Appellant acquired title to the marina, it filed a new application to modify the original conditions imposed by the Board in granting the special exception. *Id.* at 448, 250 A.2d at 264. At a subsequent hearing, the Board again heard testimony and argument, before denying the relief requested. The Circuit Court for Cecil County affirmed the Board's decision. *Skipjack*, at 448, 250 A.2d at 265.

The Court of Appeals affirmed, principally because a timely appeal was not taken by Appellant's predecessor from the first decision of the zoning board. *Id.* at 449, 250 A.2d at 266. The court, in rendering its opinion, never mentioned the phrase *res judicata*. But even assuming that was the theory upon which the case turned, it is distinguishable from the instant proceeding. In *Skipjack*, the Board of Zoning Appeals unmistakably acted in a *judicial* capacity. It heard testimony and argument, and filed a written opinion, in contradistinction to the Planning Board's actions here.

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In short, the cases cited by Respondents do not support its claim that Petitioners' actions are barred by *res judicata*.

Respondents' limitations argument asserts that the time for Petitioner's appeal has passed. They assert that Petitioners were required to raise their objections to the Deed of Dedication when the Planning Board approved the preliminary plan and/or site plan. They contend that Petitioners should have objected to the absence of a condition requiring a specific easement or covenant to preserve the Rural Open Space in perpetuity during any of the three hearings. *See* Answering Mem. of the Resp't Montgomery County Planning Board 18.

The review for subdivision approval is a three-step process. First, the preliminary plan must be approved to ensure compliance with the Master Plan. Next, the site plan must be approved for compliance with zoning ordinances. Finally, the subdivision record plat must be approved. Respondents calculate that Petitioners' objections were first raised more than four years after the preliminary plan approval, and six months after the site plan approval.

As an initial matter, Petitioners had every right to assume that the Planning Board, in acting upon Respondents' application, would act in a manner consistent with the requirements of (h)(4). Petitioners correctly point out that the preliminary plan approval, evidenced by the Corrected Resolution dated March 30, 2011, did not contain any language touching upon the issue of compliance (or possible failure to comply) with (h)(4). In fact, the Corrected Resolution, while somewhat ambiguous, appears to suggest that *two* actions were necessary for approval: the ROS designation for Parcel A, as required under the RNC Zone, *and* a dedication as parkland for active recreation purposes.

Thus, on page 5 of the Corrected Resolution, it is written: "Permitted density from the 17.4-acre portion should be designated as rural open space under RNC Zone *and* dedicated as

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parkland for active recreation purposes” (emphasis supplied). Nowhere in this document was it suggested that a Deed of Dedication would be recorded in lieu of the form previously deemed by Ms. Daniel to be appropriate for transactions of this nature. Accordingly, there was nothing for Petitioners to appeal upon passage of the Corrected Resolution.

Approval for the second step, the site plan, appears in the Resolution dated August 9, 2011. This document also indicated that two actions would be required: “a reference to the recorded easement *and* deed of dedication is to be noted on the record plat” (page 4). The approval did not state that the ROS designation would be made by a Deed of Dedication. This being the case, again, there was nothing for Petitioners to appeal. They had no indication at that time that a Deed of Dedication would be the instrument relied upon by the Planning Board to effectuate compliance with (h)(4). As Petitioners aptly stated in their memorandum, the recorded easement and dedication originally contemplated were later transmogrified from two instruments to one – the Deed of Dedication.

Accordingly, it was not until the time of plat approval for the western tract on February 9, 2012, that Petitioners learned of the intent to file a Deed of Dedication. The court finds that date to control for purposes of the first appeal filed in these cases (Civil Action No. 360249-V), and both of the appeals are timely.

IV. Land Swap to Montgomery County Public Schools (Farquhar Middle School)

Much has been made of a prospective land swap of Parcel A to Montgomery County Public Schools (“MCPS”). The court is informed that in early 2011, MCPS staff initiated procedures for a feasibility study to modernize nearby Farquhar Middle School. Were such a project undertaken, students would be transported to a holding school in Bethesda during the construction, which would require a long bus ride.

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In response to parent complaints about the relocation of the students to a distant site, MCPS staff proposed that a new middle school be built on Parcel A. The location of the current school would then be conveyed to MNCPPC, purportedly to represent the loss of the 17.4 acres that were intended to constitute ROS for the BFS subdivision.

In September, 2011, the Montgomery County Board of Education voted to approve the prospective deal. Petitioners allege that MCPS staff contacted officials at MNCPPC regarding the exchange, and that the Planning Board was also briefed on the proposal. It is further alleged that MNCPPC staff members participated in a community meeting where the swap was discussed with MCPS staff on January 3, 2012.

Respondents suggest that before any land transfer could occur it would be the subject of a public hearing, and subsequent Planning Board consideration, before approval could take place. They contend that Petitioners are effectively asking this court to prohibit the occurrence of something that has not yet – and may never – happen.

The court agrees with Respondents that this issue is not before the court, and is at best prematurely raised. Accordingly, the proposed land swap will not be considered by the court in its decision, except insofar as it may explain why the Planning Board chose the Deed of Dedication as the instrument to effectuate the ROS covenant, rather than the recommended Form Declaration.

V. Deed of Dedication

Petitioners contend that the Planning Board's approval of the six plats is erroneous because the plats, particularly Plat A, are not compliant with the requirements of the zoning ordinance, the Master Plan, Preliminary Plan, and Site Plan in establishing and preserving in perpetuity the ROS of the subdivision. They argue that the approved BFS Preliminary Plan

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authorized development predicated upon the inclusion, in perpetuity, of Parcel A as part of the ROS. BFS could not have 37 dwelling units approved without inclusion of the density taken from Parcel A, and it could not have the required area of ROS without Parcel A. Therefore, the Planning Board's approval of all plats was unauthorized. It should be noted that Petitioners concede that the Deed of Dedication satisfies the Preliminary and Site Plan requirements. They do not concede, however, that the Deed of Dedication complies with the requirements of the zoning ordinance.

They reiterate that Respondents are deliberately attempting to disregard the requirements of (h)(4), because the Deed of Dedication does not guarantee that Parcel A will be preserved as ROS in perpetuity. Petitioners assert that Pulte can convey its interest in Parcel A to MNCPPC, thus giving the latter fee ownership, extinguishing the covenant which ensures that the tract will remain parkland.

Petitioners request that compliance with (h)(4) be effectuated by the execution and recordation of the covenant that the Planning Board has previously approved for this type of matter. They demand that the covenant be recorded among the Land Records of Montgomery County prior to the approval of any plat for Parcel A, and that after the recordation of the required covenant, the language be included on the plat to reflect the recordation of that covenant. They emphasize that, in Montgomery County, "land can only be used in accordance with the uses and development standards prescribed by the zone in which the . . . land is located." *See* Montgomery County, Md., Code § 59-A-5.1 (2004).

Respondents take the position that whether preservation is by deed of dedication, easement or covenant is immaterial, so long as the instrument is in a recordable form approved

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by the Planning Board. They argue that the plain meaning of (h)(4) is evident, and that a court cannot surmise contrary legislative intent when the statutory language is clear and unambiguous.

As previously stated, the plain language of (h)(4) does not, in the court's view, *require* utilization of the forms recommended by Ms. Daniel. A reading of the ordinance implies only that whatever form is used must be approved by the Planning Board. It in no way suggests that the form must be pre-approved, or standardized. The ordinance does not command the use of particular language within the covenant instrument. Petitioners' argument that resort must be had to the legislative history of this section is therefore without merit, and the court will not interpret the language in such a way as to extend the ordinance's application. *See Cnty. Council of Prince George's Cnty. v. Dutcher*, 365 Md. 399, 780 A.2d 1137 (2001). It matters not, contrary to Petitioners' contention, that the legislative history of the ordinance is contained in the record in this case. The court simply does not need to resort to that history, because the words of the ordinance are clear.

That being said, the Planning Board is still charged with the task of effectuating the zoning requirements during the approval process, and in that regard it must ensure that the covenant herein be a perpetual one. Respondents correctly assert that deference is due an agency's interpretation of the laws it administers, and that the court should take into consideration the relevant expertise of the agency. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore City*, 407 Md. 53, 78, 962 A.2d 404, 419 (2008).

Thus, it is ironic that the Planning Board's legal counsel, Ms. Daniel, drafted and/or recommended that the Planning Board utilize a particular form of covenant that would ensure its perpetuity: the Form Declaration. It was apparently her belief, as evidenced in her June 8, 2007,

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memo, that the language in (h)(4) required 1) for *private* ROS, a standardized easement form, and 2) for *public* ROS, a standardized covenant form.

While the court has held that (h)(4) does not require the use of a standardized form pre-approved by the Planning Board, but rather the production of any form approved by that body, it is instructive that one of the agency's legal representatives thought the Form Declaration to be necessary. That she would do so certainly undercuts Respondents' suggestion that the Deed of Dedication was the appropriate instrument to effectuate compliance with (h)(4), and supports Petitioners' arguments herein. Disregarding the advice of its own legal counsel is not consistent with the Planning Board's present insistence that its actions ought to be afforded judicial deference. The court therefore defers to the agency's expertise in this context, but not with the result Respondent urges. Instead, the court believes Ms. Daniel's Form Declaration is the model upon which the intended covenant ought to be patterned.

Respondents urged at oral argument that there is really no such thing as perpetuity in land use. Certainly, nothing is guaranteed in this world. Condemnation and abandonment, for example, are two ways that the intention of a perpetual covenant might be extinguished in the future. While this may be true, the Planning Board – charged by law to effect compliance with the zoning ordinances – may not willy-nilly choose simply to approve a deed of dedication that it ought to know will do little to ensure perpetuity. Simply because (h)(4) requires approval of a form by the Planning Board should not be taken literally. The form must be reasonably calculated to ensure perpetuity, lest the words of the ordinance be drained of all meaning.

In this context, the proposed school board land swap does become relevant, and may explain why the Planning Board apparently rejected use of the Form Declaration. The Deed of Dedication does not, however, ensure a covenant to run with Parcel A in perpetuity. It is a

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common law dedication, similar to that discussed in *Gregg Neck Yacht Club, Inc. v. Cnty. Comm'rs of Kent County*, 137 Md. App. 732, 769 A.2d 982 (2001). The court agrees with Petitioners that Respondents' purported dedication dilutes any purported compliance with (h)(4), because when the dedication terminates, so does the protection of the ordinance. As previously discussed, but not satisfactorily addressed by Respondents' memoranda or at argument, Respondent Pulte may at any time convey the servient estate to MNCPPC, thus extinguishing the covenant. *Bosley v. Burk*, 154 Md. 27, 139 A. 543 (1927).

Petitioners request that the court order that compliance with (h)(4) be effectuated by the execution and recordation of the Form Declaration, and that such covenant be recorded prior to the approval of Plat A. The court declines to require the Planning Board to do so, because it finds that use of the Form Declaration is not required. By its decision, the court finds only that the existing Deed of Dedication is not compliant with the requirement of perpetuity embodied in (h)(4). The Planning Board may take any future action it deems appropriate to effect compliance, including use of the Form Declaration, without prejudice to Petitioners' right to seek further judicial review.

Accordingly, it is this 14th day of November, 2012, by the Circuit Court for Montgomery County, Maryland

ORDERED, in Civil Action No. 360249-V, that the decision of the Montgomery County Planning Board, on February 9, 2012, which approved Subdivision Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 of the Batchellor's Forest Subdivision, is hereby **REVERSED and REMANDED**, for future proceedings not inconsistent with this opinion, and it is further

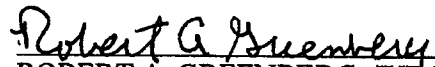
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ORDERED, in Civil Action No. 363941-V, that the decision of the Montgomery County Planning Board, on May 31, 2012, which approved Subdivision Plat No. 220120830 of the Batchellor's Forest Subdivision, is hereby **REVERSED** and **REMANDED**, for future proceedings not inconsistent with this opinion.



ROBERT A. GREENBERG, JUDGE
Circuit Court for Montgomery County

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Clerk of the Circuit Court
Montgomery County, Md.

ATTACHMENT 2

RURAL OPEN SPACE EASEMENT

THIS RURAL OPEN SPACE EASEMENT ("Easement") is made this _____ day of _____, 2012, by Pulte Home Corporation (the "Grantor") with offices located at 1600 Arrowhead Drive, Suite 225, Fairfax, Virginia 22030, to The Maryland-National Capital Park and Planning Commission, a body corporate and politic (the "Grantee" or "M-NCPPC"), with offices located at 8787 Georgia Avenue, Silver Spring, Maryland 20910.

RECITALS

1. The Grantor owns in fee simple 17.11433 acres, more or less, of certain real property situate, lying and being in the 8th Election District of Montgomery County, Maryland, zoned Rural Neighborhood Cluster ("RNC") (the "Property").
2. The Property is shown as "Parcel A, Block C" on a plat of subdivision recorded among the Land Records of Montgomery County at Plat No. 24455, attached hereto and incorporated herein by reference as Exhibit "1" (the "Original Record Plat").
3. The Original Record Plat is to be revised by a Corrective Record Plat to be recorded among the Land Records for the sole purpose of referencing this Easement. The Property is shown as "Parcel B, Block C" on the Corrective Record Plat.
4. The Grantor filed and received approval from the Montgomery County Planning Board of the M-NCPPC of Preliminary Plan No. 120060850 and Site Plan No. 82008019A (the "Plans") for development of 37 dwelling units on a larger tract of land that includes the Property.
5. The Grantor is obligated pursuant to Section 59-C-9.573 of the Montgomery County Zoning Ordinance 2004, as amended (the "Zoning Ordinance") to burden the Property through granting of a perpetual easement, the terms and conditions of which are provided herein. The specific areas to be encumbered with the Easement are identified on the Corrective Record Plat as "Rural Open Space Easement" and shall be referred to in this Easement as the "Easement Areas".

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions set forth in this Easement, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Grantor irrevocably grants in perpetuity, this Easement to the Grantee according to the terms and conditions set forth herein.

1. The above Recitals are incorporated into this Easement.
2. This Easement, and any and all covenants contained herein, shall be perpetual and shall touch, concern and run with the land and shall be binding on the Grantor and its successors, assigns and transferees.
3. The grant of this Easement is subject to those uses and improvements located, or to be located, on the Property as shown on the Plans.

ATTACHMENT 2

4. Any and all uses on the Easement Areas must be in compliance with the Plans, and the provisions of the RNC Zone relating to permitted uses in the Rural Open Space under Section 59-C-9.572 of the Zoning Ordinance in effect on the date this Easement is recorded in the Land Records, a copy of which is attached hereto and incorporated by reference as Exhibit "2". In accordance with Section 59-C-9.572, the following classes of uses are not permitted in the Easement Areas:
 - 4.1. Agricultural – industrial;
 - 4.2. Agricultural – commercial;
 - 4.3. Resource production and extraction;
 - 4.4. Residential;
 - 4.5. Commercial Uses; and
 - 4.6. Services.

5. Notwithstanding the limitations on uses listed in Paragraph 4 above, the following uses are permitted in the Easement Areas in accordance with Section 59-C-9.572 of the Zoning Ordinance:
 - 5.1. A one-family detached dwelling located on a lot, 10 acres or greater in size, that contributes to the overall total of rural open space, and is a logical extension of the existing open space area;
 - 5.2. Accessory apartment that is part of a one-family detached dwelling located on a lot 10 acres or greater in size, that contributes to the overall total of rural open space;
 - 5.3. A farm tenant dwelling in existence prior to application of the RNC zone, or a structure converted to a farm tenant dwelling included as part of a historic site designated in the Historic Master Plan;
 - 5.4. A one-family semi-detached dwelling and townhouse as part of a moderately-priced dwelling unit development;
 - 5.5. A home occupation associated with an otherwise permitted residential use.

6. In accordance with Section 59-C-9.574(h)(4) of the Zoning Ordinance in effect on the date this Easement is recorded in the Land Records, attached hereto and incorporated by reference as Exhibit "3", any natural or agricultural features on the Easement Areas must be managed in accordance with the Plans and any development or subdivision not expressly authorized therein is prohibited.

7. The Property shall be managed in accordance with the requirements of Section 59-C-9.574(h)(3) of the Zoning Ordinance in effect on the date this Easement is recorded in the Land Records, a copy of which is attached hereto and incorporated herein by reference as Exhibit "4". In accordance with Section 59-C-9.574(h)(3), rural open space may be

ATTACHMENT 2

managed and maintained but may be modified to improve its appearance, function or overall condition by using the following techniques:

- 7.1 Reforestation;
 - 7.2 Woodland management;
 - 7.3 Meadow management;
 - 7.4 Stream bank protection;
 - 7.5 Non-structural storm water best management practices as defined by the most recent edition of the Maryland Stormwater Design Manual adopted for use by Montgomery County, Maryland;
 - 7.6 Wetlands management;
 - 7.7 Agricultural management.
8. The terms and provisions of this Easement are severable and in the event that any term or provision of this Easement is deemed invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.
 9. The granting of this Easement does not convey to the public the right to enter the Property for any purposes.
 10. This Easement shall be construed and enforced in accordance with the laws of the State of Maryland, and shall be effective upon recordation among the Land Records of Montgomery County, Maryland.

IN WITNESS WHEREOF, the Grantor has set its hand and seal as of the day and year written below its signature.

[SIGNATURE PAGES FOLLOW]

ATTACHMENT 2

GRANTOR:

PULTE HOME CORPORATION

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____:

I HEREBY CERTIFY that on this ____ day of _____, 2012, personally appeared _____ (name), _____ (title) of Pulte Home Corporation, who is personally well known to me, or proven to be, the person named as attorney-in-fact as aforesaid, and by virtue vested in him as aforesaid, acknowledged the same to be the act and deed of Pulte Home Corporation, the Grantor herein, for the purposes herein contained.

WITNESS my hand and seal this ____ day of _____, 20__.

My Commission Expires: _____

NOTARY PUBLIC

ATTACHMENT 2

INFORMATION FOR RECORDING PURPOSES ONLY:

Tax ID Numbers:

No title insurance issued.

After recordation, please return to:

Office of the General Counsel
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

ATTORNEY CERTIFICATION

I certify that this instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.

Carol S. Rubin

ATTACHMENT 2

EXHIBIT "1"

ORIGINAL RECORD PLAT

ATTACHMENT 2

EXHIBIT "2"

Section 59-C-9.572 of the Zoning Ordinance

ATTACHMENT 2

EXHIBIT "3"

Section 59-C-9.574(h)(4) of the Zoning Ordinance

ATTACHMENT 2

EXHIBIT "4"

Section 59-C-9.574(h)(3) of the Zoning Ordinance



ATTACHMENT 3

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

MCPB
Item # 9
12-20-2012

MEMORANDUM

DATE: December 10, 2012

TO: Montgomery County Planning Board

VIA: Catherine Conlon, Supervisor
D.A.R.C. Division *CK*
(301) 495-4542

FROM: Stephen Smith, Senior Planner *SS*
D.A.R.C. Division
(301) 495-4522

SUBJECT: Informational Maps and Summary of Record Plats for the Planning Board
Agenda for December 20, 2012

The following record plats are recommended for APPROVAL, subject to the appropriate conditions of approval of the preliminary plan and site plan, if applicable, and conditioned on conformance with all requirements of Chapter 50 of the Montgomery County Code. Attached are specific recommendations and copies of plan drawings for the record plat. The following plats are included:

220130890 Batchellors Forest

ATTACHMENT 3

Plat Name: Batchellors Forest
Plat #: 220130890

Location: Located on the east side of Batchellors Forest Road, approximately 2,000 feet north of Norbeck Farm Drive
Master Plan: Olney
Plat Details: RNC zone; 1 parcel
Applicant: Pulte Home Corp.

Staff recommends approval, with the condition noted below, of the this minor subdivision plat pursuant to Section 50-35A(a)(5), which states:

Plat of Correction. A plat may be recorded under the minor subdivision procedure to correct inaccurate or incomplete information shown on a previously recorded subdivision plat. The plat may correct drafting or dimensional errors on the drawing; failure to include a required note, dedication, easement or other restriction; incorrect or omitted signatures; and/or other information normally required to be shown on a recorded plat. All owners and trustees or the land affected by the correction must sign the revised plat. In addition, the plat of correction must clearly identify the original plat that is being replaced and contain a note identifying the nature of the correction.

The subject plat has been submitted in order to reference a Rural Open Space Easement to be placed upon the property in response to the Memorandum and Order of the Circuit Court for Montgomery County in Civil Case Nos. 360249-V and 363941-V. The form of the Rural Open Space Easement must be approved by the Board prior to its action on this plat. Provided that the form is acceptable to the Board, the easement document will be executed and recorded in the Land Records of Montgomery County and the associated liber/folio will be filled in to the appropriate blanks on the plat drawing.

Staff recommends approval of this plat with the following condition:

1. The liber/folio reference to the Rural Open Space Easement must be inserted on the plat mylar prior to obtaining the signature of Planning Board Chair Carrier.

Staff notes for the Board, the following modifications which appear on the proposed plat in order to satisfy the requirements of Section 50-35A(a)(5):

- Addition of Note 11 which references the as-yet recorded Rural Open Space Easement
- Addition of Note 12 to clearly identify the plat being corrected and the nature of the correction

ATTACHMENT 3

- **Addition of reference to the previous plat (Plat No. 24455) to the face of the drawing**

Included in the following pages is a copy of the proposed plat of correction (which is unsigned as of the date of this memo, but will contain the signatures of property owner and surveyor at this item is considered) with the aforementioned modifications highlighted and a copy of the previously recorded plat for the subject property (Plat No. 24455).

ATTACHMENT 3

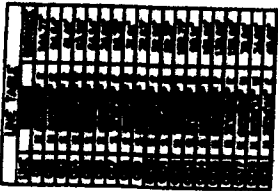
PLAT NO. 24455

TAX MAP No. HT881 & JT 121

LOT 11
NORWOOD
OVERLOOK
PLAT 19429

LOT 43
PLAINFIELD ORCHARDS
PLAT 16481

SUBDIVISION RECORD PLAT
PARCEL A BLOCK C
BATCHELLORS FOREST
ELECTRON DISTRICT No. 8
MONTGOMERY COUNTY, MARYLAND
SCALE: 1" = 100' FEBRUARY, 2012



N/F
SUE M. HYDE, et al
L-10882 F.73

N/F
THOMAS
HYDE, ET UX
L-4863 F.802

PARCEL A
746,500 SQ. FT.
17,114.53 Acres
Proposed to improve per L-10882 F.73
L-41862 F.83

N/F
MONTGOMERY COUNTY BOARD OF EDUCATION
L-3403 F.244

RECEIVED
APR 2 - 2012
COUNTY CLERK
MONTGOMERY COUNTY

GRAPHIC SCALE
(1" = 100')



AMERICAN OVERSEAS
The purpose of this plat is to show the location of the parcel within the subdivision and to show the location of the parcel within the subdivision. This plat is a part of the subdivision record plat and is subject to the provisions of the Subdivision Record Act, Article 20, of the Annotated Code of Maryland.



LOT 1
PLAT 23181
OUR LADY OF
GOOD COUNSEL
HIGH SCHOOL

LOT 10
FOREST
BATCHELLORS
PARCEL A
L-41862 F.83

N/F
PULTE HOME CORP
L-41862 F.83

N/F
VICTOR & LOPEZ
L-2736 F.87

LEGEND
--- BOUNDARY
--- EASEMENT
--- EGRESS
--- UTILITY

AMERICAN OVERSEAS
The purpose of this plat is to show the location of the parcel within the subdivision and to show the location of the parcel within the subdivision. This plat is a part of the subdivision record plat and is subject to the provisions of the Subdivision Record Act, Article 20, of the Annotated Code of Maryland.

AMERICAN OVERSEAS
The purpose of this plat is to show the location of the parcel within the subdivision and to show the location of the parcel within the subdivision. This plat is a part of the subdivision record plat and is subject to the provisions of the Subdivision Record Act, Article 20, of the Annotated Code of Maryland.

[Signature]

As to the Board of Directors of the Montgomery County Board of Education

[Signature] SA 2

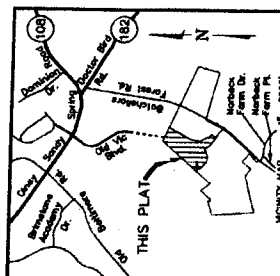
AMERICAN OVERSEAS
The purpose of this plat is to show the location of the parcel within the subdivision and to show the location of the parcel within the subdivision. This plat is a part of the subdivision record plat and is subject to the provisions of the Subdivision Record Act, Article 20, of the Annotated Code of Maryland.

AMERICAN OVERSEAS
The purpose of this plat is to show the location of the parcel within the subdivision and to show the location of the parcel within the subdivision. This plat is a part of the subdivision record plat and is subject to the provisions of the Subdivision Record Act, Article 20, of the Annotated Code of Maryland.

PLAT No. 24376

CURVE	BEARS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
C2	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
C3	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
C4	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
C5	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
C6	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
C7	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
C8	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
C9	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
C10	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
C11	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
C12	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
C13	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
C14	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
C15	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
C16	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
C17	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
C18	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
C19	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
C20	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'

ARC	BEARS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
A1	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
A2	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
A3	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
A4	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
A5	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
A6	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
A7	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
A8	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
A9	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
A10	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
A11	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
A12	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
A13	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
A14	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
A15	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
A16	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'
A17	183.00'	20.01'	178.11'	S 22°20'31" W	20.00'	20.00'
A18	183.00'	20.01'	178.11'	S 22°20'31" E	20.00'	20.00'
A19	183.00'	20.01'	178.11'	N 67°39'29" E	20.00'	20.00'
A20	183.00'	20.01'	178.11'	N 67°39'29" W	20.00'	20.00'



TAX MAP No. HT561 & JT 121

NOTES

- This property is zoned RNC.
- This plat conforms to the requirements of Chapter 25-A of the Montgomery County Code regarding Subdivision Record Platting.
- This plat is subject to all easements and conditions as required by the Plan No. 20000001A, and Preliminary Plan No. 120000000 both entitled "Subdivision Record Plat".
- Parcel A & B, Block A are to be conveyed to the Homeowner's Association.
- The land contained herein is within an approved clear development and subdivisions to be permitted after the plat is approved.
- The property shown herein is subject to the requirements of Chapter 22A of the Montgomery County Code, including approval of a Final Subdivision Plat and appropriate agreements prior to issuance of a subdivision control permit.
- Unless expressly contemplated by the plan as approved, all terms, conditions, easements, restrictions, and requirements associated with any preliminary plan, approved by the Montgomery County Planning Board, shall remain in effect and shall be deemed to be a part of this plat. The original Public Plat for this subdivision is on file with the Montgomery County Planning Board and available for public review during normal business hours.
- This Plat is not intended to show any public facilities or restricting the ownership and use of the property. This Plat is not intended to show any public facilities or restricting the ownership of title or to depict or affect matters affecting title.
- This property is subject to a Declaration of Covenants recorded in Liber 14817 of Folio 311.
- Parcels A and B, Block A are subject to a Common Open Space Easement recorded in Liber 28840 of Page 578 among the Land Records for Montgomery County.
- Condemnation shown herein is based on the Maryland State M40 81/701 only. Subdivisions shown on the plat with the Montgomery County Planning Board approval and Liber 124883123 and the plat with coordinates of North 48.52400, 77.839943282. The combined issue factor for this site is to convert the plat coordinates to ground/surface coordinates, divide the grid coordinates by the combined issue factor.
- The distances on this plat are to be measured on the ground/surface. To convert the grid distances to the ground/surface, multiply the ground/surface distances by the combined issue factor.

OWNER'S CERTIFICATE

I, *[Signature]*, of the County of Montgomery, State of Maryland, do hereby certify that the plat shown above is a true and correct copy of the original plat as approved by the Montgomery County Planning Board and recorded in the Montgomery County Land Records. I am the owner of the property shown herein and I have no knowledge of any other person claiming an interest in the same. I have no knowledge of any other person claiming an interest in the same. I have no knowledge of any other person claiming an interest in the same.

PLAT HOME CORPORATION

[Signature]
 Director

RECEIVED

MMR - 6 2017

Montgomery County Planning Board

GRAPHIC SCALE

1 inch = 100 feet

1 inch = 200 feet

1 inch = 300 feet

1 inch = 400 feet

1 inch = 500 feet

LEGEND:

- 1. LOT - UNDEVELOPED LAND
- 2. LOT - DEVELOPED LAND
- 3. PUBLIC INFRASTRUCTURE

NORTHWEST INVESTMENT PARK
 L8007 F.50

OUR LADY OF GOOD COUNSEL HIGH SCHOOL
 P.No. 23191

PARCEL A, BLK. B
 BATCHELLORES FOREST
 L41852 F.93

PARCEL B, BLK. A
 BATCHELLORES FOREST
 L32736 F.87

SURVEYOR'S CERTIFICATE

I, *[Signature]*, do hereby certify that the plat shown above is a true and correct copy of the original plat as approved by the Montgomery County Planning Board and recorded in the Montgomery County Land Records. I am the owner of the property shown herein and I have no knowledge of any other person claiming an interest in the same. I have no knowledge of any other person claiming an interest in the same. I have no knowledge of any other person claiming an interest in the same.

FOR PUBLIC WATER AND SEWER ONLY

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD

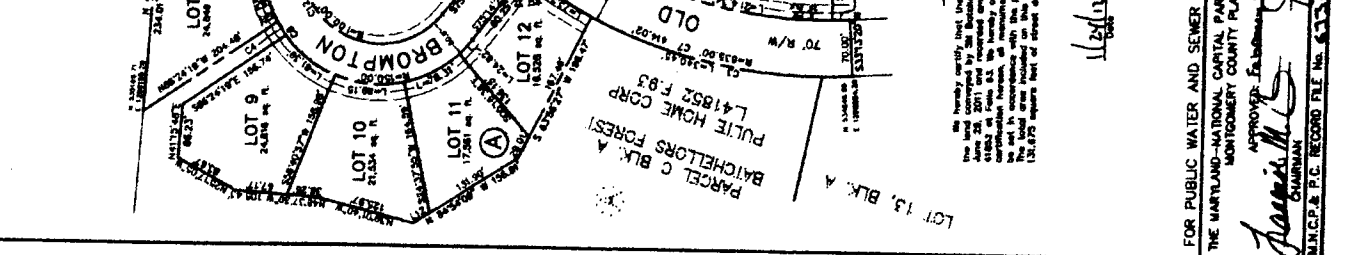
APPROVED: *[Signature]*
 CHAIRMAN

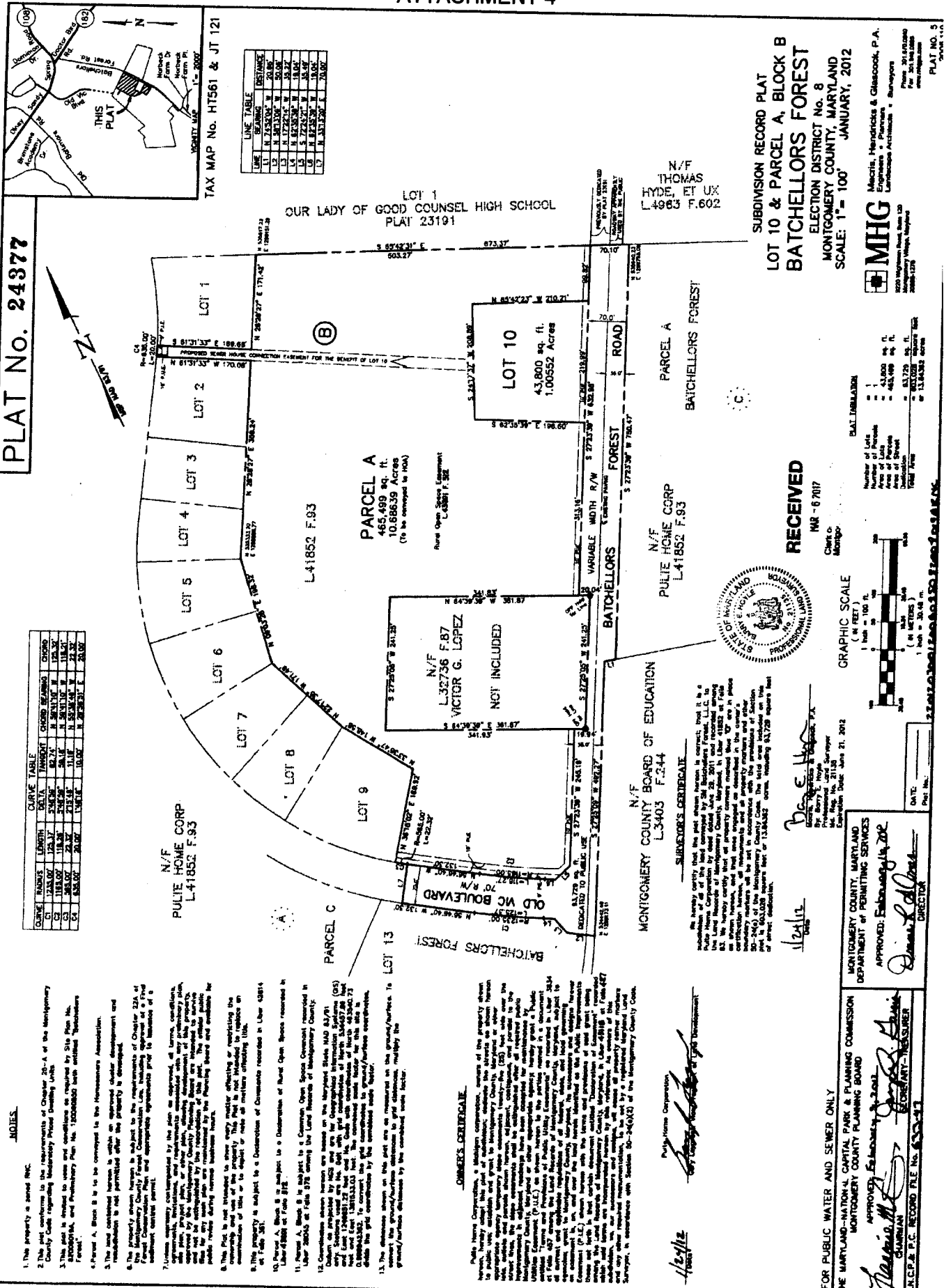
APPROVED: *[Signature]*
 SECRETARY-THE ASSESSOR

DATE: _____

PLAT No. 24376

PLAT No. 4
 2008.118





PLAT NO. 24377

TAX MAP No. HT561 & JT 121

LINE	BEARING	DISTANCE
L1	N 72°50'00" E	20.00'
L2	N 80°30'00" E	50.00'
L3	N 80°30'00" E	50.00'
L4	N 72°50'00" E	20.00'
L5	S 72°50'00" W	20.00'
L6	S 80°30'00" W	50.00'
L7	S 80°30'00" W	50.00'
L8	S 72°50'00" W	20.00'

CURVE	CHORD	BEARING	DELTA	TANGENT	CHORD	BEARING	CHORD
C1	118.00'	N 24°30'00" E	108.00'	118.00'	N 24°30'00" E	108.00'	118.00'
C2	118.00'	N 24°30'00" E	108.00'	118.00'	N 24°30'00" E	108.00'	118.00'
C3	118.00'	N 24°30'00" E	108.00'	118.00'	N 24°30'00" E	108.00'	118.00'
C4	118.00'	N 24°30'00" E	108.00'	118.00'	N 24°30'00" E	108.00'	118.00'

SUBMISSION RECORD PLAT
 LOT 10 & PARCEL A, BLOCK B
 BATCHELLORS FOREST
 ELECTION DISTRICT No. 8
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1" = 100'
 JANUARY, 2012

MHG
 Mezzis, Hendricks & Glasscock, P.A.
 Engineers & Planners
 Landscape Architects & Surveyors
 100 Montgomery Avenue, Suite 100
 Rockville, MD 20850
 Phone: 301.470.0200
 Fax: 301.464.8800
 www.mhgpa.com

RECEIVED
 MAR - 6 2012
 Clerk of
 Montgomery

GRAPHIC SCALE
 1 inch = 100 ft.
 1 inch = 30.48 m.



SURVEYOR'S CERTIFICATE
 I hereby certify that the plat, exhibit, return, or map, and the subdivision of all of the land covered by this plat, exhibit, return, or map, was prepared by me or under my direct supervision and that I am a duly licensed and qualified Professional Land Surveyor in the State of Maryland. I am duly licensed and qualified in the State of Maryland. I am duly licensed and qualified in the State of Maryland. I am duly licensed and qualified in the State of Maryland.

David E. Hester
 Professional Land Surveyor
 License No. 21128
 Expiration Date: June 31, 2012

APPROVED: February 14, 2012
 Director

- NOTES**
- This property is a joint venture.
 - This plat conforms to the requirements of Chapter 26-A of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22A of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22B of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22C of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22D of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22E of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22F of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22G of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22H of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22I of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22J of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22K of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22L of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22M of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22N of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22O of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22P of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22Q of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22R of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22S of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22T of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22U of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22V of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22W of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22X of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22Y of the Montgomery County Code regarding Subdivisions of Land.
 - This plat is subject to the requirements of Chapter 22Z of the Montgomery County Code regarding Subdivisions of Land.

OWNER'S CERTIFICATE
 I, the undersigned, do hereby certify that the plat, exhibit, return, or map, and the subdivision of all of the land covered by this plat, exhibit, return, or map, was prepared by me or under my direct supervision and that I am a duly licensed and qualified Professional Land Surveyor in the State of Maryland. I am duly licensed and qualified in the State of Maryland. I am duly licensed and qualified in the State of Maryland. I am duly licensed and qualified in the State of Maryland.

FOR PUBLIC WATER AND SEWER ONLY
 THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD
 APPROVED: February 14, 2012
 CHAIRMAN
 SECRETARY-TREASURER
 MNCPP&C RECORD FILE No. 633-47

ATTACHMENT 5

MCPB No. _____
Reaffirmation of Plat Nos. 220120260, 220120270,
220120280, 220120290, and 220120300
Batchellors Forest Subdivision
Date of Hearing: December 20, 2012

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review and approve subdivision plats; and

WHEREAS, on February 9, 2012, the Planning Board approved Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 ("Residential Plats") and on May 31, 2012, the Planning Board approved Plat No. 220120830 ("Dedication Plat"), all the required record plats consistent with previously approved Preliminary Plan¹ and Site Plans² for development of the subdivision known as Batchellors Forest Subdivision; and

WHEREAS, on November 15, 2012, in *Hyde et al. v. The Montgomery County Planning Board*, Civil Nos. 360249-V, 363941-V, the Honorable Robert A. Greenberg, of the Circuit Court for Montgomery County, Maryland, issued a Memorandum Opinion and Order reversing the Planning Board's ~~February 9, 2012~~, approval of the Residential Plats and the Dedication Plat; and

WHEREAS, the Court found that the rural open space covenant referenced in the Dedication Plat did not comply with the requirement of perpetuity as embodied in §59-C-9.574(h)(4) of the Zoning Ordinance and remanded the matter to the Planning Board to take future action it deems appropriate to effect compliance; and

WHEREAS, following review and analysis of the Court's Order, Staff issued a memorandum to the Planning Board, dated December 10, 2012, setting forth its analysis and recommendation for compliance with the Court's remand ("Staff Report"); and

¹ Preliminary Plan No. 120060850

² Site Plan Nos. 820080190 and 82008019A

Approved as to
Legal Sufficiency: _____
M-NCPPC Legal Department

WHEREAS, on December 20, 2012, the Planning Board held a public hearing, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the remand; and

WHEREAS, at the hearing, by the vote as certified below, the Planning Board voted to:

- a. Approve the Rural Open Space Easement;
- b. Approve the Plat of Correction for Parcel B, Block C (the Dedication Plat) adding reference to the Rural Open Space Easement; and
- c. Reaffirm the validity of the Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board reaffirms the validity of the Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Planning Board FINDS, no corrective action is necessary with regard to Subdivision Plat Nos. 220120260, 220120270, 220120280, 220120290, and 220120300 as recorded, and their validity may be reaffirmed upon approval of the Rural Open Space Easement and the Plat of Correction for the dedicated parcel.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is _____ (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner _____, seconded by Commissioner _____, with Commissioners _____, _____,

MCPB No. _____
Reaffirmation of Plat Nos. 220120260, 220120270,
220120280, 220120290, and 220120300
Batchellors Forest Subdivision
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_____, _____, and _____ voting in favor at its regular meeting
held on Thursday, _____, 20__, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board