



**RECOMMENDATION:**

Staff recommends Approval of Limited Preliminary Plan Amendment No. 11990204A, subject to the following conditions:

- 1) Applicant must submit a minor subdivision record plat application to create one lot by i) consolidating the abandoned rights-of-way into the adjacent lots, and ii) further consolidating all of the 24 lots on the Subject Property into one lot meeting all requirements of Chapter 50 and Chapter 59 of the Montgomery County Code.
- 2) The Record Plat must reflect any necessary storm drain or stormwater management access easements.

**REQUEST BY THE STATE HIGHWAY ADMINISTRATION (SHA) OF THE MARYLAND DEPARTMENT OF TRANSPORTATION FOR THE STATE OF MARYLAND**

On May 22, 2014, pursuant to Section 49-68, *et seq.* of the Montgomery County Code, SHA petitioned the Planning Board for approval to abandon the public right-of-way of the roadways known as Llewellyn Manor Way and Bready Farm Court as part of a pending record plat application. (Attachment 1) The rights-of-way consist of paper street cul-de-sacs within the southern portion of the Llewellyn Fore (now Fields) subdivision of Cloverly. SHA (“Petitioners”) own all the adjoining properties zoned RE-2C that have frontage on and access to the subject rights-of-way.

**SITE DESCRIPTION**

The Llewellyn Manor Way and Bready Farm Court proposed abandonment is for 2.84 acres of right-of-way out of a consolidated area of 15.26 acres on the south side of Norbeck Road, approximately 500 feet east of Layhill Road. The abandonment is for two unclassified, non-master planned cul-de-sacs. Llewellyn Manor Way has a right-of-way width of 54 feet, and is approximately 1800 feet in length. Bready Farm Court has a right-of-way of 50 feet, and is approximately 300 feet in length (See Figures 3 and 4). Llewellyn Manor Court has a 10 feet public utility easement (PUE) on both sides of the street and Bready Farm Court a PUE of identical width on the south side of the street. There are twenty-four (24) residential lots abutting the subject rights-of-way.

The rights-of-way were dedicated by subdivision plats Nos. 19914 and 19915, recorded on May 23, 1995. (See Figures 3 and 4) Twenty four (24) lots were recorded on the plats together with an outlot for a proposed stormwater management easement, and two open space parcels intended to be conveyed to the homeowners association. No other properties have access to the rights-of-way and they do not connect to any public street other than Norbeck Road.

**REVIEW BASIS**

Section 49-68 (e) of the Montgomery County Code (the “Code”) authorizes the Planning Board to abandon previously unused right-of-way, upon a finding that “the right-of-way is not necessary for anticipated public use.”

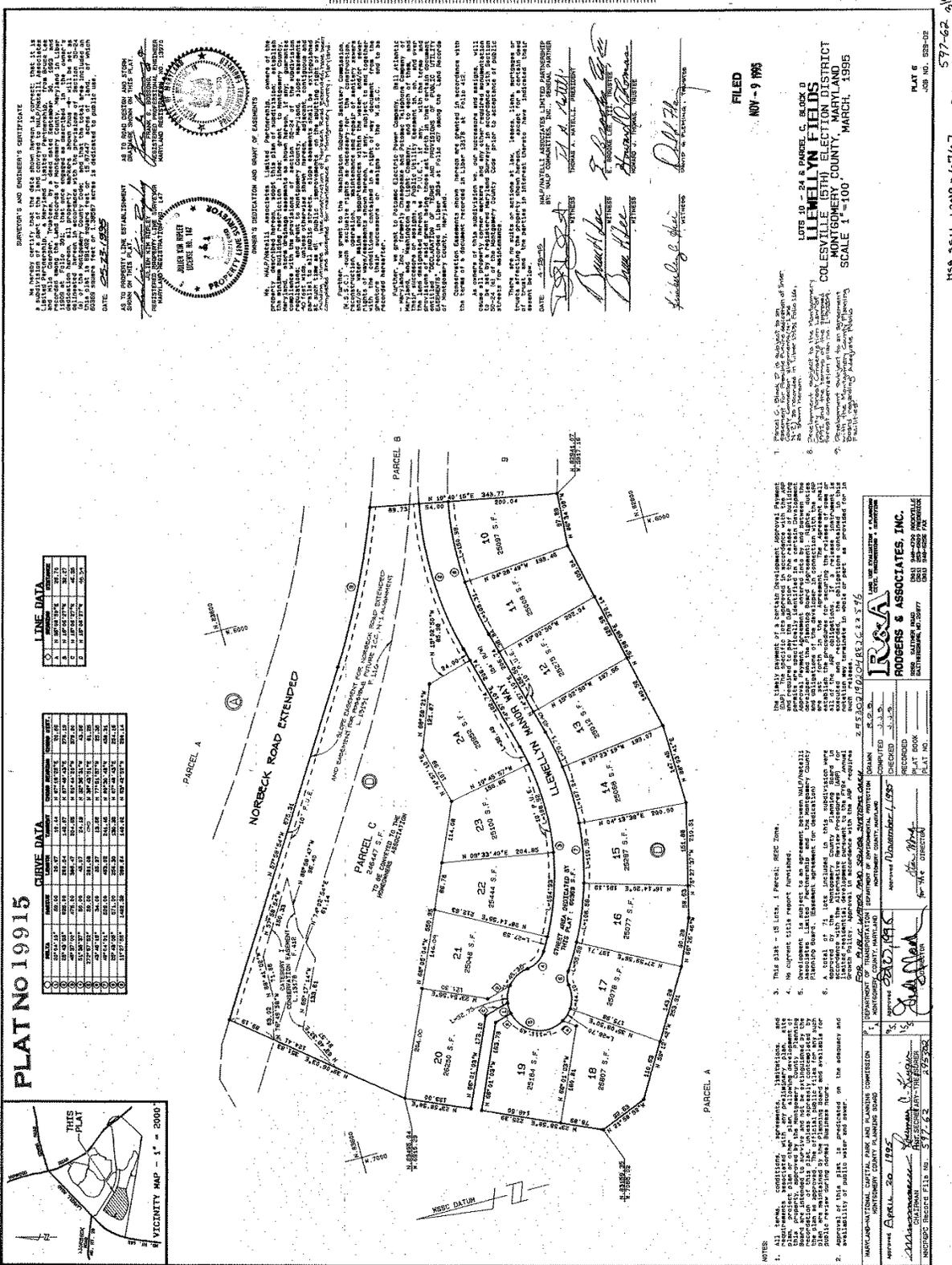


Figure 1 - Vicinity



Figure 2 - Site





**Montgomery County Code Sec. 49-68. Abandonment of previously unused rights-of-way.**

- a) *If any right-of-way, except a right-of-way located entirely in a municipality which has independent zoning and subdivision authority, has not been in public use, one or more abutting property owners may petition the Planning Board to abandon the right-of-way. The petition must take the form of a preliminary plan for the subdivision of land, and must state the reason for the proposed abandonment and show any proposed relocation or realignment of the right-of-way, where applicable.*
- b) *The petitioner must notify:*
  - (1) *each person with a recorded financial interest in land abutting the right-of-way;*
  - (2) *the Department of Transportation;*
  - (3) *the County Fire and Rescue Service;*
  - (4) *the Police Department;*
  - (5) *the Washington Suburban Sanitary Commission, when applicable;*
  - (6) *each public utility operating in the area;*
  - (7) *the governing body of each incorporated municipality or special taxing district which adjoins the right-of-way sought to be abandoned; and*
  - (8) *Any grantee of a franchise under Article 2, if the franchise authorizes the grantee to install or use any facility in, over, or under the affected right-of-way.*
- c) *The Planning Board must solicit the comments of each notice recipient, and then promptly determine whether:*
  - (1) *the right-of-way previously was improved or used for the purposes for which it was intended or dedicated; and*
  - (2) *the right-of-way is necessary for anticipated public use.*
- d) *If a recipient of notice under subsection (b) does not respond within 60 days after the notice is sent, the Planning Board must presume that the recipient does not oppose the proposal.*
- e) *If the Planning Board finds that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision. The amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses.*

**RATIONALE FOR PETITION**

The SHA holds title to parcels comprising approximately 15.26 acres, by virtue of a Deed recorded in 1998 among the Land Records of Montgomery County in Liber 16405, folio 192, from Natelli Communities Limited Partnership, and NVR, Inc., unto the State Highway Administration of the Maryland Department of Transportation. (See Attachment 1)

The abandonment area consists of parcels that are part of the project objectives to compensate for the environmental impacts of the ICC. The abandonment area is not necessary for the public use as a roadway as anticipated in the deed and plat and as shown on the original URS Plat dated January 21, 1999.

The roads were never constructed by the former developer and accepted by Montgomery County. Nor were the roads constructed by the SHA as owners of the property. Furthermore, there are no permanent structures or improvements in the abandonment area.

## **FOREST CONSERVATION**

All conditions of the approved Forest Conservation Plan including creation of forest conservation easements have been satisfied on the north side of Norbeck Road. The approved Forest Conservation Plan did not require the creation of forest conservation easements on the Subject Property, south of Norbeck Road.

## **COMMUNITY OUTREACH**

The Applicant has complied with all submittal and noticing requirements, and staff has not received correspondence from any community groups as of the date of this report.

## **CONCLUSIONS**

The Petitioners own all the lots abutting the subject right-of-way. No other properties require the streets for access or vehicular travel. Llewellyn Manor Way and Bready Farm Court do not provide access to any other property, do not connect to any road other than Norbeck Road and are not situated within a network of roads. Subject to a successful re-platting of the lots and right-of-way, no property will be denied access to a public road as a result of the Abandonment and eventual record plat. Therefore, granting the Abandonment, with the condition recommended above, would be appropriate under Section 49-68 (e) of the Code because the right-of-way has not been in public use and is not necessary for anticipated public use.

## **STAFF RECOMMENDATION RE ABANDONMENT**

Staff recommends Approval of Limited Preliminary Plan Amendment No. 11990204A, subject to the following conditions:

- 1) Applicant must submit a minor subdivision record plat application to create one lot by i) consolidating the abandoned rights-of-way into the adjacent lots, and ii) further consolidating all of the 24 lots on the Subject Property into one lot meeting all requirements of Chapter 50 and Chapter 59 of the Montgomery County Code.
- 2) The Record Plat must reflect any necessary storm drain or stormwater management access easements.

## **ATTACHMENTS**

- A. State Highway Administration Request for Approval of Abandonment

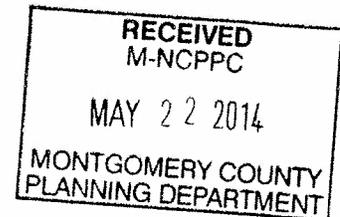
Martin O'Malley, *Governor*  
Anthony G. Brown, *Lt. Governor*



James T. Smith, Jr., *Secretary*  
Melinda B. Peters, *Administrator*

May 14, 2014

Cathy Conlon, Supervisor  
M-NCPPC  
Development Application and Regulatory Coordination Division  
8787 Georgia Avenue, Silver Spring, MD 20910



Re: M-B Northwest Branch Recreational Park Project  
Preliminary Plan Abandonment of Road and Right of Way

Dear Ms. Conlon,

On behalf of the State Highway Administration (SHA) of the Maryland Department of Transportation for the State of Maryland, we state that SHA holds title to parcels comprising 15.26754 acres of land, more or less, by virtue of a Deed dated October 26, 1998 and recorded November 2, 1998 among the Land Records of Montgomery County in Liber 16405, folio 192, from Natelli Communities Limited Partnership, a Maryland Limited Partnership and NVR, Inc. a Virginia Corporation, unto the State Highway Administration of the Maryland Department of Transportation shown as Exhibit A.

We submit this letter of intent to abandon the roadways known as Llewellyn Manor Way and Bready Farm Court in order to petition the County Planning Board to abandon the public right of way that is currently shown as Exhibit C (Paper Streets) of the roads mentioned above. This is to be considered our application to the Board for this purpose.

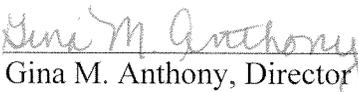
The abandonment area consists of parcels that are part of the Project and program objectives to compensate for environmental impacts to improve and restore the natural and community environments set forth in an MOU dated October 21, 2009 and shown as Exhibit B as part of community stewardship efforts of the ICC known as 'The PROGRAM'. The abandonment area is not necessary for the public use as a roadway as anticipated in the deed and plat and as shown on the original URS Plat dated January 2011 shown as Exhibit C and as recorded in the Declaration of Easement from Natelli Communities dated January 21, 1999 recorded in Liber 16798 folio 521 in the Land Records of Montgomery County, shown as Exhibit D, the roadways known as Llewellyn Manor Way and Bready Farm Court.

My telephone number/toll-free number is \_\_\_\_\_  
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

The roads were never dedicated by the former developer and accepted by Montgomery County. Nor were the roads developed by us as owners of the property. Furthermore, there are no permanent structures or improvements in the abandonment area. Therefore we ask under the Montgomery County Code Section 49-68, to apply as an Application to abandon the "Abandonment Area" before your County Planning Board thru this letter. If the County Planning Board determines that the Roads are not necessary for anticipated public use, we ask that the Board authorize the Right-of -Ways/Roads to be abandoned and so that we can incorporate it into a Limited Preliminary Plan amended plat and new amended State Plat. The new amended plats will show all other land needed for easements and other public use.

**THE STATE HIGHWAY ADMINISTRATION  
OF THE MARYLAND DEPARTMENT OF  
TRANSPORTATION**

BY:   
Gina M. Anthony, Director  
Office of Real Estate

Recommended for Approval By:   
Chief Property Asset Management  
Office of Real Estate

Approved as to legal form and sufficiency this  
16<sup>th</sup> day of May, 2014

  
Ellen W. Callahan  
Assistant Attorney General