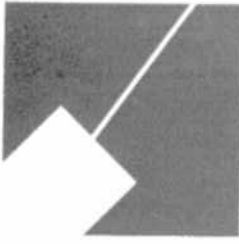


M-NCPPC



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Agenda Date: September 24, 2015
Item #11
Reconsideration Request

DATE: September 22, 2015

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Principal Counsel
301-495-4646 

RE: Reconsideration Request
Greentree Farm, Plats 220120040, 220120060, and 220120510 ("Plats")

With this brief memorandum, I forward for the Board's review a request for reconsideration of its September 3, 2015 approval of the Plats ("Petition"). The approval was subject to revision to the Covenant that sets forth the terms and conditions of the Trail i) to expand the use to cyclists and hikers, and ii) to clarify the right of the public to maintain the trail. I also understand that the Applicant will be marking the trail so that its location is clear to the public. Further, since a portion of the trail is located within a Category I Conservation Easement, that Easement has been revised to harmonize the right of the public to maintain the trail with the restrictions otherwise imposed by a standard Category I Conservation Easement.

The Petition was filed September 14, 2015, by Kevin Kennedy, Tim Dugan and William Gibson (Shulman, Rogers, et al) on behalf of Equestrian Partners in Conservation ("EPIC"). It is not the usual practice of the Board to adopt a resolution for approval of plats. Therefore, the Petition was filed within the 10-day deadline for filing (See Rule 4.12.1) based on the Board's action at the September 3rd hearing. On September 21, 2015, Steve Orens (Miles & Stockbridge) on behalf of the Applicant filed an Opposition to the Petition.

Attached for your review is the following:

- Attachment 1 –Petition for Reconsideration and Exhibits
- Attachment 2 –Response/Opposition to Petition
- Attachment 3 –Amended Covenant
- Attachment 4 – Amended Category I Conservation Easement

I. APPLICABLE RULES

Rule 4.12.1 – Grounds for Reconsideration. The Planning Director or any Party may petition the Board to reconsider a Resolution¹ within ten days after the date of mailing of the Resolution....A petition for reconsideration must specify any alleged errors of fact or law and state fully the grounds for reconsideration because of **mistake, inadvertence, surprise, fraud, or other good cause.**

Rule 4.12.2 – Motion and Participation in Action to Reconsider.

1. A motion to reconsider can only be made by a Commissioner who voted in the majority. To participate in the vote, a Commissioner must have been present at the hearing or reviewed the record.
2. If no motion is made, the request for reconsideration is denied, and the [Board's action] stands. If the Board votes to reconsider, the [Board's action] is void and a new hearing is scheduled on the matters raised in the reconsideration request.

II. PARTICIPATION

Only Commissioners Anderson, Fani-Gonzalez and Presley were present on September 3, 2014. They voted unanimously to approve the Plats conditioned on the noted revisions to the Covenant. Therefore, only those named Commissioners may move to reconsider and participate in the vote.

III. REASONS PROVIDED FOR RECONSIDERATION REQUEST

EPIC is requesting the Board reconsider whether the Covenant recorded by the Applicant is consistent with Condition #3 of the Preliminary Plan. For ease of reference, what follows is the relevant Condition #3 to the Preliminary Plan:

A Public Use Trail Easement ("PUTE") must be created on the Property as shown on the preliminary plan. The PUTE will name Equestrian Partners in Conservation ("EPIC"), a 501c3 non-profit corporation, its successors or assigns, or another suitable entity identified by MNCPPC staff, as the Grantee and must include, at a minimum:(i) the conditions and restrictions governing uses that are within the definition of "Recreational Purpose" as defined in the MD Ann. Code, Natural Resources Article, §5-1101; (ii) the right of Grantee to construct, maintain and repair the trail, with no obligation by either Grantee or the Grantor to do so; and (iii) rights of enforcement by both the Grantor and the Grantee, with no obligation on either to do so. The PUTE must be approved by the Commission's Office of the General Counsel which approval may not be delayed beyond 120 days following adoption of the MCPB Resolution of approval of the Preliminary Plan but no less than 90 days after submission of a reasonable draft for

¹ As noted above, it is not the Board's usual practice to adopt a resolution for plat approval. Therefore, we agreed, and all concerned parties affirmed that the appropriate trigger would be the Board's approval of the Plats on September 3, 2015.

review. Prior to recordation of the initial plat, the applicant must record the PUTE in the land records and the plat must include a reference to the Liber and Folio of the recorded PUTE. Should the designated Grantee as specified herein decline to accept the PUTE, the record plat may be recorded without the reference.

Rather than summarize the Petition and the Opposition in this memorandum, I will let the filings speak for themselves. Regardless of the final outcome of the Petition, the Board's final decision on the Plats is subject to judicial review. Therefore, if the Board has any specific questions, a closed session would be appropriate for that discussion.

IV. NEXT STEPS

If the Board either does not act on or denies the Petition, its approval of the Plats stands. If the Board grants the Petition, its approval of the Plats is rendered void and a new hearing will be set on October 8, 2015, for the Board to act on the Plats