

TO: Montgomery County Planning Board

FROM: Development Review Division

SUBJECT: Staff suggested revisions to Conditions #6 and #9  
Casey Property at Mill Creek 1-02022

DATE: December 17, 2004

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Please accept these as replacements to conditions #6 and #9 as found in your staff report for the Casey Property at Mill Creek dated December 10, 2004. These changes were discussed at the December 16, 2004 hearing. We will again discuss this application at the December 23rd hearing.

- 6) Applicant to record a Plat of Reservation for a twenty-four month period (not to exceed December 23, 2006) to include the area identified for a "proposed elementary School" (8.53 acres) as shown on the preliminary plan for Phase II within sixty days of the date of Opinion of the preliminary plan approval, together with an area representing the future dedication of Amity Drive in an alignment suitable for the school site.
- 9) The applicant shall dedicate all road rights-of-ways shown on the approved preliminary plan to the full width mandated by the Shady Grove Sector Plan unless otherwise designated on the preliminary plan, including the dedication of Amity Drive through Phase II no later than at the time of acquisition of the proposed elementary school site in an alignment suitable for the school site.

RECEIVED  
#6  
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## *A Fax From:*

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**DATE:** Friday, December 17, 2004

**TO:** The Planning Board (MNCPPC)

**FROM:** *John Compton, Scientific Director, GeneDx, Inc.*

**PAGES** (including this page): 5

*Please call 301-519-2100 if you do not receive all the pages.*

**RE:** Casey Property at Mill Creek, Preliminary Plan No. 1-02022

Please include with material for the Boards hearings next week.

Thank you,

John



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**December 17, 2004**

Re: Casey Property at Mill Creek, Preliminary Plan No. 1-02022

To the Planning Board,

The Preliminary Plan under your consideration represents almost four years of cooperative negotiation and revision and a remarkable degree of accord among the many interested and impacted parties. The planning process, while lengthy, has been aided by the Board's policies and standards and their consistent application by your professional planning staff. Up until a few weeks ago, we anticipated that we would be addressing the Board on a few remaining issues of incompatibility which we would ask you to direct be included for consideration at the time of site-plan review by the Staff.

I now find it necessary to also address a surprising change in the staff recommendation to the Board, and to urge you to attach LOS dedication as a condition to Phase 1 rather than Phase 2.

### **Dedication of the Legacy Open Space acreage in Phase 1.**

You and we are aware that issues injected by two County Council members have been pressed upon the Applicant, the Staff, and the Board (in a letter from Mr. Silverman). Unfortunately, this resulted in the recent unconscionable scheduling of a partial review of the current plan for December 16<sup>th</sup> (Phase-1 only, which my letter of last week urged you to reject) and now in scheduling "gymnastics" and a continued Public Hearing that surely stretches the "fairness" principle to its breaking point.

Alarming, the interference by the County Council members seems also to have influenced the staff recommendations to the Board. In particular, condition 15 on the timing of dedication of the LOS property to MNCPPC represents a major departure from representations made by staff to Washington Grove, to the Applicant, to the Shady Grove Alliance and to others individually and in group meetings. The Staff consistently said that the condition of dedication of the LOS property would be tied to Phase 1 approval, and not deferred to Phase 2. ***The arguments for this are very strong, and we urge the Board to change condition 15 to link dedication to Phase 1*** (we will submit language to accomplish this for your consideration next week):

1. The 12 acres of LOS property belong in the Phase 1 approval, not in Phase 2. The LOS parcel is distinct and independent of the rest of Phase 2. The LOS is contiguous with the wetlands and stream valley areas being dedicated to MNCPPC in Phase 1, and abuts lots in Phase 1. The density and arrangement of lots in Phase 1 is predicated on dedication of the 12 acres of land to MNCPPC as natural parkland. It is legally and contractually good policy to obtain ownership of the LOS at the time of implementation of the Phase 1 site-plan. In fact, as an end-point for LOS dedication, the Phase 2 school site reservation period of 2 years is arbitrary and inappropriately conveys the benefits of the negotiated trade-offs on this site, while exposing the dedication to the uncertainty of unforeseen events. It seems irresponsible to risk loss of this property to the public good when more sound and legal options are available.
2. The LOS program is one of the Board's and County's most far-sighted and respected planning policies. Significant millions of dollars have been leveraged to purchase LOS properties, many smaller than the LOS field. The 12-acre LOS parcel will be acquired *at no cost to the County*, and it is reasonable and important to make early acquisition a priority. What justifies proceeding otherwise?
3. Protection of the LOS field as open space is principally justified by its relationship to the historic Town of Washington Grove, though the open space benefits all our neighbors as well as the greater Shady Grove community and the County. The Board's classification of the property as a Class II historic resource enabled us and your staff to negotiate for this outcome, and we request that you complete the bargain by pursuing dedication at the earliest legally justified time, not at a politically expedient time.
4. In his letter, Mr. Silverman expresses his interest as a member of the PHED Committee to examine issues concerning siting a school on the Casey Property at Mill Creek in the Council's deliberation on the Shady Grove Master Plan, and "without the constraint of any previous dedication decisions affecting our options". While not arguing the merits of his implied meaning (that the use of LOS land should be up for grabs), I submit that this matter is, and should remain, of very little concern in determining your actions on this Preliminary Plan. We have examined the Legacy Open Space enabling legislation, and it is the opinion of our legal advisor that it gives the Council the option of altering the use of property dedicated to the program. If your legal staff concurs with this legal interpretation, then you will **not** constrain the Council's options by making the best planning policy decision to tie dedication of the LOS to Phase 1, instead of Phase 2.

### **Require reservation of the school site for the allowable 3 years.**

We are very perplexed that the Staff has not recommended the full 3-year reservation period for the proposed school site, as well as the apparent acceptance of the 2-year period by the Board of Education. The Staff and school officials have acknowledged the desirability of having the maximum time period to purchase the reserved site. *Several legal advisors strongly endorse the opinion that the Board has authority to require this period of reservation, even under the circumstances of this Preliminary Plan. **Condition 6 should be changed to 3 a year plat of reservation.*** We submit that the practical consequences of this extension on the Applicant's options will be negligible, because difficult issues for Phase 2 implementation are unlikely to be resolved in the 3-year reservation time period (which is one reason there is a Phase 2!). These

include at least the issues of 1) access to the Phase 2 property, which requires completing the connection of Amity Drive to Crabbs Branch Rd. on adjacent property and 2) negotiating who will build the two necessary wetlands bridge crossings.

### **An opportunity to improve compatibility**

Washington Grove has been progressively surrounded by higher density residential development over the last 25 years. Our undeveloped forest reserve has served to buffer our rural legacy from these largely incompatible communities to the northeast and northwest. However, the Casey Property at Mill Creek lies entirely adjacent to the Town's residential neighborhood to the southeast, presenting the potential for major impacts from today's higher density style of development.

Consequently, the Town has been closely involved for almost four years with Oxbridge Development and the Planning Staff in negotiating and reviewing development plans on this property. Throughout we have acknowledged the Applicant's right to reasonable development of the property, but have worked to moderate the predictable and damaging impact on our Town's rustic and unique character from the largely incompatible high-density neo-urban proposal for almost 200 residential units.

In 2002, upon the recommendation of MNCPPC staff and compelling testimony from many interested parties, the Planning Board acknowledged the importance of a portion of the Casey property to the historic character of Washington Grove and designated 13 acres as historic Class II Legacy Open Space (or LOS). Thereafter the Applicant and the Town engaged in a highly constructive effort to keep development off the Legacy Open Space field by increasing density of housing on other parts of the site. These negotiations concluded with a carefully constructed preliminary plan supported by Washington Grove, the Applicant and the Planning Staff, which retained about 180 lots in exchange for the Applicant's agreement to freely dedicate 12 acres of the LOS as undeveloped natural land. At the same time the parties "agreed to disagree" on a number of other issues.

These issues largely involve the remaining incompatibility between the style and density of the proposed Phase 1 lots immediately adjacent to Washington Grove. We ask that the Planning Board recognize the negative impacts of these features and the potential for improving the design during the site-plan process. ***We ask that you give the staff the opportunity to achieve these desirable improvements by directing that the factors below be considered wherever possible during the site-plan process.***

1. The 5-6000 sq ft lots on the three acres of designated LOS acres present a dramatic contrast to the existing homes. The indicated setbacks and opportunity for buffering/screening along Ridge Road is of questionable effectiveness, and ought to be improved. We would like consideration at the time of site-plan review of a further reduction in the number of units proposed for this part of the property and an increased setback from Ridge Rd.
2. The stem road lots 43-44 impinging on the LOS acres back into steep slope and environmentally sensitive area. To be built, grading seems likely to threaten the stream valley buffer. The staff should pay close attention to this situation and these lots should

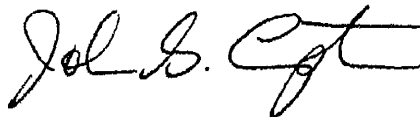
not be approved at site-plan if this is the case. As noted below, they may be recovered elsewhere on the Phase 1 property if the housing mix were to be altered.

3. In order to meet the yield of units sought by the Applicant, the Plan includes a new street paralleling lower Ridge which was agreed to by the Applicant, the staff and ourselves. We agreed was the best option providing the greatest setback and opportunities for forest buffer to transition between the small lots/large homes in Phase 1 and the existing more rural homes in the Town. This is deemed preferable to backing these homes onto Ridge Rd without a larger buffering setback, which would not only destroy the rustic road character of Ridge Road, but would present Town property owners with an unscreenable wall of structures (lots 5-19). However, if the number of units along Ridge Rd were reduced (perhaps by increasing the number of multiunit dwellings in the interior of Phase 1), better compatibility would be possible. Mr. Robert Booher, a registered architect, has submitted with his testimony a plan that could accomplish this goal by adjusting the mix of single and multifamily units while maintaining the Applicant's yield.

I thank the Planning Board staff for their many, many hours of work on this complex development review. They have responded with professional integrity and positive recommendations to resolve many issues, enabling the Applicant and Staff to bring this Preliminary Plan to the Board for review.

I hope that the Planning Board will do no less!

Sincerely,

A handwritten signature in black ink, appearing to read "John G. Compton". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

John G. Compton  
Mayor