THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM #1
5/26/05

MEMORANDUM

DATE: May 26, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Catherine Conlon, Acting Supervisor
Development Review Division

FROM: Richard Weaver, Planner Coordinator (301) 495-4544

REVIEW TYPE: Preliminary Plan Review
APPLYING FOR: Preliminary plan of Subdivision for 554 one family residential lots (including a minimum of 70 MPDUs), and an 18-hole golf course and clubhouse

PROJECT NAME: Indian Spring
CASE #: 1-04108
REVIEW BASIS: Chapter 50, the Montgomery County Subdivision Regulations

ZONE: R-90 and R-200
LOCATION: Located on the east side of Layhill Road (MD 182) approximately 1000 feet north of Randolph Road.

MASTER PLAN: Kensington-Wheaton
APPLICANT: Winchester Homes
HEARING DATE: May 26, 2005

STAFF RECOMMENDATION: Denial

INTRODUCTION

The following staff memorandum provides an update to the previous staff memorandum dated February 25, 2005, which is also included in this Staff packet (Attachment A). Below the reader will find discussion of the previous Planning Board hearing, summary of direction given by the Planning Board; and a recommendation based on a review of the current plan and supporting documentation. As you will note, staff continues to recommend denial of the plan based upon excessive stream buffer encroachments and a unit mix that staff believes is not justifiable.

PREVIOUS PLANNING BOARD HEARING

The Planning Board most recently heard this Preliminary Plan on March 3, 2005. At that hearing, Staff recommended denial of the Preliminary Plan for two reasons: 1) the Applicant's proposed 36-acre encroachment into the environmental buffer was excessive and unprecedented; and 2) Staff could not recommend approval of Applicant's request for a higher percentage of attached units than typically allowed under the R-200 zone because it could not find that the development would be "more desirable from an environmental perspective."

At the hearing, some of the Planning Board members indicated that the environmental buffer encroachment proposed by the subdivision was excessive and that the applicant needed to revise the proposal to lower the encroachment. Individual members of the Planning Board also directed staff to re-evaluate its formulas and factors for assigning credits to specific measures for compensating this encroachment. Some Planning Board members indicated that the compensation credits for out-of-watershed measures were perhaps too severe. In addition, the applicant suggested the use of M-NCPPC parkland to locate some compensation measures within the watershed of impact (Northwest Branch). After the discussion by the Planning Board regarding the environmental buffer issue, the Applicant requested a deferral of the Board's decision in order to work with Staff to further address the buffer issues as directed by members of the Board

STATUS OF DEVELOPMENT

It is important to state at this point in the memorandum that the overriding viewpoint of Staff that has been constant from the original review of this plan:

> *Staff firmly believes that this application should be subject to the same level of regulatory review as all development applications submitted to the Montgomery County, Department of Park and Planning.*

Staff and the Applicant disagree on this point. The applicant asserts that its proposed plan is "redevelopment" and not "new" development and that, therefore, the

level of review of its proposal should somehow be less than what is required under the regulations. It is Staff's opinion that the regulations apply equally to a proposed plan whether it is redevelopment of an existing site or development of property that has never been developed before. In fact, the term "redevelopment" is not defined in Chapter 50, the Subdivision Regulations or in Chapter 59, the Zoning Ordinance.

Support for Staff's position is found in the provisions of the Subdivision Regulations and Zoning Ordinance. Neither differentiate between "redevelopment" and "new" development. In addition, both contain certain grandfather provisions that allow for prior iterations of regulations to apply in certain instances; however, none of those provisions apply to this application. Moreover, the fact that preliminary plan approvals may expire and require property owners to seek new approvals consistent with current regulations also supports Staff's position.

In addition, there are no special provisions for reviewing "redevelopment" in the Environmental Guidelines. Existing environmentally-incompatible development does not justify future development being environmentally-incompatible. In short, there is no language in the Subdivision Regulations, Zoning Ordinance, or Environmental Guidelines that would allow the Planning Board to apply a lesser standard of review for this application than any other application. Thus, staff finds no regulatory basis not to require full compliance with Chapter 50 and Chapter 59 for this plan.

OVERVIEW OF STAFF RECOMMENDATION OF DENIAL

Based on the Planning Board's directive at its hearing of March 3, 2005, the applicant has revised its plan to reduce environmental buffer encroachments. Concurrently, staff re-evaluated its compensation credit criteria and also continued to look for possibilities to identify more credits for compensation of the remaining buffer encroachment. However, staff continues to recommend denial of the preliminary plan for the following reasons:

1. **Excessive encroachment into the environmental buffer**

The proposed environmental buffer encroachment remains large and excessive, despite a reduction from 36 acres to 32.7 acres (3.3 acre reduction). As such, the proposed encroachment represents the largest acreage and percentage (32.9%) of environmental buffer encroachment for a project that is subject to the Planning Board's "Environmental Guidelines" and the county's Forest Conservation Law.

Staff classifies the proposed preliminary plan as new development since virtually the entire golf course is being regarded and realigned, the club house is being remodeled, the parking area is to be removed and reconfigured, and 554 new housing units with related infrastructure are proposed. Staff's position is consistent with the requirements of other regulatory agencies, such as the County Department of Permitting Services (stormwater management and sediment control) and the Department of Public Works and Transportation (roadways), in the review of this plan. Staff is consistent in placing high

priority on efforts to preserve, enhance, and restore existing environmentally-sensitive areas land development project sites.

In staff's opinion, the magnitude of environmental buffer encroachment sets a damaging precedent, regardless of the ability to compensate. Allowing such encroachment will take away the strongest incentive to applicants to thoroughly examine all options to avoid and minimize, and may encourage other projects to propose large encroachments. If it is acceptable to compensate for an environmental buffer encroachment no matter what the magnitude or reason for the encroachment, there is no longer any incentive to first preserve environmental buffers as the highest priority land for preservation, reforestation, and restoration. This is inconsistent with the Forest Conservation Law, Sections 50-32(a) and (c) of the Subdivision Regulations, and the "Environmental Guidelines" and severely limits staff's and the Planning Board's ability to effectively implement the law and guidelines.

2. **Notwithstanding staff's concern with excessive encroachment into the environmental buffer, measures to compensate for the encroachment fall short of the recommended compensation credits. Further, options to make up the shortfall are inconsistent with current practices and set damaging precedent.**

If the Planning Board finds this level of buffer encroachment to be acceptable, the applicant's proposed compensation measures still fall short of full compensation within the watershed of impact (Northwest Branch) using staff's criteria. Staff has identified options to make up for the shortfall, but staff does not support them. These options are contrary to staff practices and park stewardship policies and may again provide unwanted precedents. One option proposes to shift a greater proportion of compensation measures than staff recommends outside the watershed of impact, and another option makes M-NCPPC parkland available for compensation. These options are unacceptable to staff: the first option provides a net environmental loss to the watershed of impact, and the second would open up parkland for use by private development to meet regulatory requirements. Precedent would be established under either scenario.

3. **Unit mix finding**

If the Planning Board finds that the level of buffer encroachment is acceptable and can be compensated for by other measures, a finding must be made by the Planning Board to permit the applicant's to proposed housing unit mix of 61% one-family attached units. The standard in the R-200 zone for this unit type is 40%. The Board may permit up to 100% one-family attached units based on either an environmental finding or an MPDU finding. The applicant believes both findings can be made for this application.

a. With respect to an environmental finding, staff would not support the waiver request because it cannot conclude that the proposed housing unit mix is *"more desirable from an environmental perspective than*

development that would result from adherence to these percentage limits...". Staff believes the proposed plan, with its large environmental buffer encroachment; compensation for part but not all, of this encroachment; and a housing yield that is constrained, not by government regulatory controls or public mandates but by the golf course use, is environmentally inferior to a plan that protects the full environmental buffers and that locates more housing to the Glenmont Metro Station on the land outside these buffers.

b. Staff also disagrees with the Applicant that the proposed unit mix is justified based on the ability to achieve MPDUs on-site due to site limitations. The applicant argues that it is not economically feasible to provide the base 12.5% MPDUs on site at the standard mix of 40% attached and 60% detached. Staff is not swayed by this argument, since economic hardship is not a basis for approval of the finding, nor has it been demonstrated by the applicant that there is an economic hardship. Again, the site limitations are self-imposed and staff is of the mind that 12.5% MPDUs can be achieved with any reasonable development envelope. The applicant has demonstrated that 15% of the units can be MPDUs under the current layout, which seems to run somewhat contrary to their argument.

Staff finds the overall stream buffer encroachment to be excessive and unacceptable, which is grounds for denial based on Section 50-32(a) and (c) of the Subdivision Regulations. Although compensation for this encroachment has been analyzed, staff believes using compensation to justify this amount of encroachment would set a very bad precedent for future reviews. However, if the Board finds the encroachment and proposed compensation to be acceptable, a Board finding to allow the proposed unit mix still must be made based upon either the environmental or MPDU provision. Staff does not believe that a finding for the unit mix can be made; therefore, staff is recommending denial of the plan.

STAFF'S ANALYSIS OF THE REVISED PRELIMINARY PLAN

Since the previous Planning Board hearing, the applicant has revised its plan:

- More of the golf course along the southern and eastern portions of the property has been shifted outside the environmental buffer.
- As a result of the changes in the golf course layout, the environmental buffer encroachment has decreased from 36 acres to 32.7 acres, which is a 3.3 acre reduction.
- The total number of dwelling units has changed from 565 to 554, which is a reduction of 11 units.

Overall Evaluation of the Environmental Buffer Encroachment

As noted earlier in this staff memorandum, the applicant has revised the preliminary plan to reduce the environmental buffer encroachment from 36 acres (shown at the March 3, 2005 public hearing) to 32.7acres. This is a 3.3-acre reduction in buffer encroachment. However, the encroachment remains the largest amount and percentage (32.9%) of environmental buffer encroachment that has been proposed for a project that is subject to the "Environmental Guidelines" and the Forest Conservation Law. Staff cannot support such a large encroachment and does not believe compensation is appropriate in this case, even if the compensation measures can meet staff's criteria as discussed.

Approving this large amount of environmental buffer encroachment would not only be inconsistent with the Forest Conservation Law and "Environmental Guidelines", staff believes it would be contrary to the Subdivision Regulations that gives the Planning Board the ability to restrict development to protect environmentally sensitive areas. Section 50-32(a) and (c) states:

"Section 50-32. Special controls for environmentally sensitive areas.

a. *Stream valleys and floodplains.* The board must, when it deems necessary for the health, safety, comfort or welfare of the present and future population of the regional district and necessary to the conservation of water, drainage and sanitary facilities, restrict subdivision for development of any property which lies within the one-hundred year floodplain of any stream or drainage course. "One-hundred-year floodplain" is defined as the area along a stream/drainage course, lake, or pond, which would experience inundation by stormwater runoff equivalent to that which would occur on the average of once in every one hundred years after total ultimate development of the watershed.

.....

(c) *Trees, Forests, and Environmentally Sensitive Areas.* The board may restrict the subdivision of land to achieve the objectives of Chapter 22A relating to conservation of land to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources and to protect environmentally sensitive areas. For purposes of this subsection, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream buffers. Specific measures also may be required to protect any rare, threatened or endangered plants or animals." [Emphasis added]

Staff believes approving such a large magnitude of environmental buffer encroachment for this project creates a precedent that substantially weakens the

implementation of the Forest Conservation Law and the "Environmental Guidelines" on all other land development projects that follow this one. Staff believes Indian Spring is not a unique project. Any actions taken on the plan would be precedent-setting. If Indian Spring can justify its large environmental buffer encroachment by providing "enough" compensation measures, then it is unclear how staff could define when any other proposed development has made "maximum use of any planning and zoning options that would result in the greatest possible retention". If one is allowed to compensate for environmental buffer encroachment, no matter how large the encroachment or the reason for the encroachment, then an environmental buffer is no longer a high priority area for natural area preservation or restoration. A buffer encroachment no longer needs to be unavoidable and necessary to be allowed. In other words, if a proposed new use that serves no public purpose or is not recommended in a master plan is allowed to substantially encroach into the environmental buffers, then staff's and the Planning Board's ability to limit future buffer encroachments will be significantly diminished.

Further, staff believes strongly that compensation is not appropriate in this case, since the private golf club does not serve a compelling public purpose significant enough to justify lowering the criteria for environmental protection and limiting housing resource (MPDU) opportunities. An environmental buffer encroachment of this magnitude should only be considered when another public need or benefit must also be achieved and that objective can be met only by minimizing, but not completely avoiding, environmental buffer encroachment. Without such judgment, compensation could be considered appropriate in every case, regardless of impact, with favoritism to the larger developers who have more resources to provide compensatory measures.

Analysis of Compensation for Buffer Encroachment

Notwithstanding staff's belief that the environmental buffer encroachment is still too large and excessive, staff did re-examine the compensation credits and ratios that were assigned to the applicant's proposed compensation measures, in accordance with the Planning Board's direction at the March 3, 2005 public hearing. Staff does not believe there is a basis for changing its 2-step method for calculating compensation credits and assigning compensation credit ratios for the applicant's proposed measures. This method includes additional opportunities for compensation that go beyond staff's standard practice of land for land compensation at a strict 2:1 ratio. Staff believes its rationale for defining the compensation credit ratios is justified because it is based on mitigation ratios used in the Forest Conservation Law. This rationale is also based on the principles that compensation should replace the value and function of the "lost" buffer (i.e., in-kind replacement) as much as possible and should be as close to the area of impact as possible.

Staff also examined numerous possible measures to find compensation within the Northwest Branch watershed to add to the applicant's proposed measures. Given the large amount of compensation needed to offset the buffer encroachment, the additional measures that staff has been able to identify involve locating these measures either on

existing M-NCPPC parkland or outside the affected watershed. Either scenario involves large deviations from current staff practices.

With the current proposal, the applicant needs a total of 43.4 compensation credits to fully compensate for the 32.7 acres of buffer encroachment. At least 32.7 credits should be within the Northwest Branch watershed (the watershed of impact) and 10.7 credits may be elsewhere. The applicant has indicated that out-of-watershed credits are available. Staff agrees that the out-of-watershed credits may be met by either locating compensation on land that the applicant owns outside of Northwest Branch, buying credits from an existing forest bank, or a combination of the two.

The constraint lies with meeting the minimum amount of compensation within the Northwest Branch watershed. The applicant's compensation measures generate 25.5 credits within Northwest Branch watershed, leaving a shortfall of 7.2 credits. The applicant has indicated that it has contacted and continues to contact property owners in the Northwest Branch watershed to create compensation credits, but at this time, it has not been able to create the 7.2 credits to make up for the in-watershed shortfall.

Staff has, at the Planning Board's direction, carefully examined opportunities to generate 7.2 compensation credits within Northwest Branch. Staff has identified measures that may be counted as compensation, but they involve significant deviations from staff practices.

One option for generating the 7.2 credits would be to allow the applicant to use M-NCPPC parkland in the Northwest Branch watershed for the compensation measures:

- Plant about 6 acres of forest in Northwest Branch Park;
- Restore/enhance/plant meadow/forest habitat on 8 to 10 acres in and around environmental buffers at the recently-purchased Red Door Store Property; and
- Improve Bel Pre Creek downstream of the Indian Spring property.

Staff believes that use of parkland for private development to meet regulatory requirements creates a bad precedent. The precedent here opens up the possibility to locate mitigation projects, such off-site forest planting and wetlands creation, that are imposed on a private development to meet environmental regulations, on parkland. If Indian Spring is allowed to use parkland to generate compensation credits, under what circumstances would other private development projects be prohibited from using parkland? If parkland is available for such projects, there is much less incentive for the private developer to avoid and minimize on-site environmental impacts or locate mitigation measures on the development site itself. It also may create a situation where a public development project (e.g., a park project) with a compelling public need must compete with a private development project for mitigation or compensation land on parkland.

A second option for generating the 7.2 compensation credits to make up for the shortfall is to allow the applicant to locate these credits outside of the Northwest Branch watershed. This would result in less compensation measures within the watershed of impact than staff's compensation criteria would require. This option significantly deviates from the principles that compensation should occur as close to the area of impact as possible and that the priority should be to locate a certain level of compensation near the impact (i.e., within the watershed of impact). If there is no minimum amount of compensation established within the watershed of impact, there is little incentive to avoid and minimize environmental buffer impacts. In addition, this may create a situation where certain watersheds or sub-watersheds are burdened with a disproportionate amount of environmental buffer impacts from new land development projects.

Although staff strongly opposes both options for compensation, staff believes that the second option (i.e., locating compensation outside the watershed of impact) is less objectionable from the broader perspective than the first option (i.e., locating compensation or mitigation for private development on parkland). Staff believes that it would be poor precedent to use parkland for compensation or mitigation in response to development, rather than as part of systematic and planned program of stewardship and use.

Analysis of Applicant's Request for Unit Mix

The plan proposes a unit mix of 39% one-family detached and 61% one-family attached units. Footnote 1 of Section 59-C-1.62 provides that in the R-200 Zone, 40%, "is the maximum percentage of one-family attached dwelling units, semi-detached dwelling units, or townhouses allowed in a subdivision" and that the "balance must be one-family detached dwelling units." Footnote 1 goes on to provide that the Planning Board may approve a development of up to 100% one-family attached, semi-detached or townhouses "upon a finding that (1) a proposed development is more desirable from an environmental perspective than development that would result from adherence to these percentage limits , or (2) limits on development at that site would not allow the applicant to achieve MPDUs under Chapter 25 A on-site.

The Planning Board must make a finding that this unit mix is justified. The applicant has submitted its justification for the finding in a letter dated May 10, 2005 from Stephen Kaufman and Erin Girard of Linowes and Blocher, LLP to Derick Berlage.

Environmental Finding

The applicant states that by reducing current environmental buffer encroachment and providing compensation measures for the remaining encroachment, the development proposal will produce a greater benefit to the environment than would result from provision of full buffers. The applicant maintains that less golf course will be within the environmental buffers than currently exists (from today's 72.4 acres of buffer encroachment to 32.7 acres under the proposed subdivision). The applicant presumes

that the significant increase in impervious surfaces that will be created from 554 dwelling units and associated roads, sidewalks, etc. and the new golf course, both within and outside environmental buffers, will be environmentally benign.

Staff strongly disagrees with all elements of this rationale. As stated earlier in this and in the February 25, 2005 staff memorandum, golf courses, even with improved operating and maintenance procedures, continue to use chemicals (e.g., fertilizers, pesticides) that can be damaging to water quality and aquatic life of receiving streams. Golf course uses within environmental buffers preclude the re-establishment of forest cover that is essential for restoring buffer functions for water quality, wildlife habitat, and aquatic life protection. The closer a golf course use is to streams, floodplains, and wetlands (i.e., the more a golf course use encroaches into environmental buffers), the greater the risk of damage to stream quality and the lower the ability to restore and reclaim the natural resource functions of these affected streams, floodplains, wetlands, and buffers. Both the new golf course and the residential development will require stormwater management facilities. Even with these stormwater management controls, the adverse impacts of the highly impervious surfaces and the golf course will not be fully mitigated. Stormwater controls, even state-of-the-art ones, are widely recognized to be much less than 100 percent effective. Therefore, in staff's opinion, the combination of a new, highly impervious residential use with a golf course that still displaces 32.7 acres of environmental buffers, neither improves the current environmental conditions on the property nor provides greater benefit than a development that protects the full environmental buffers.

The applicant maintains that locating more housing units near a metro station has an environmental benefit because of the large opportunity for mass transit use and lower dependence on individual automobiles. Staff agrees with this reasoning. However, in staff's opinion and contrary to the applicant's argument, the opportunity to maximize transit usage is actually limited by the applicant's proposal, and, as such, does not support the applicant's request to increase the attached unit mix. The applicant proposes more attached units to increase the total housing yield within a residential building envelope that is artificially constrained. The constrained building envelope for housing is self-created because it is driven by the applicant's desire (not by a requirement) to include a golf course use.

Staff believes the argument for creating a transit-oriented development favors a development at Indian Spring that protects the full environmental buffers and utilizes the remaining land on the property for residential use. This approach would yield housing units close to mass transit that significantly exceed the 554 housing units proposed by the applicant under its current proposal. In addition, the environmental buffers would be fully protected and the restoration and re-establishment of the natural resource functions of these buffers could occur to the full extent. Thus, a plan that delineates the full environmental buffers for conservation (i.e., parkland dedication or conservation easement) and develops the remaining land for residential use achieves multiple environmental objectives: maximizing housing near mass transit, protection of full

environmental buffers, and maximum restoration opportunities of degraded environmental buffers.

In conclusion, staff cannot find that the applicant' s proposal "is more desirable from an environmental perspective than development that would result from adherence to these percentage limits". From an environmental perspective, staff would not support the request for a waiver of the unit mix.

MPDU Finding

Subsequent to the March 3, 2005 hearing, the District Council added findings related to MPDUs to the Zoning Ordinance effective April 1, 2005. Zoning Text Amendment 04-14, now Ordinance No. 15-37, cites that the Planning Board may approve up to 100% one-family attached units if it can be demonstrated that it is more desirable from an environmental perspective *or* that the limits on development at the site would not allow the Applicant to achieve MPDUs under Chapter 25A on-site. The amendment continues to require that any finding by the Board for more attached units achieve not less than the same level of compatibility as a plan using the standard percentage mix.

The applicant has submitted a letter, (see Attachment B) which requests such a finding by the Planning Board to allow 61% of the units to be attached and 39% of the units to be detached. The letter requests the finding based on the following justifications:

1) The building envelope imposed by site constraints and the need to preserve the pre-existing golf course use on this property limit the density that can be achieved under the typical R-200 unit mix. The Applicant suggests that the location of this property close to Glenmont Metro Station is significant in that higher densities near mass transit are desirable from an environmental and planning perspective.

2) The Applicant has proffered an increase in the number of MPDUs from the standard requirement of 12.5% to 15%. The Applicant contends that without the requested unit mix to allow for a greater number of attached units, the developer could not provide 15% MPDUs and the requirement to provide 12.5% MPDUs would be an economic hardship.

3) Approval of the unit mix will achieve the same, if not better, compatibility with the adjacent neighborhoods by allowing for the buffers as shown on the plan. The plan maintains the relationship of new one-family attached dwellings with existing one-family attached, and new one-family detached dwellings with existing one-family detached.

Staff cannot make the required finding that the limits on development at the site would not allow the Applicant to achieve MPDUs under Chapter 25A on-site. In Staff's opinion, the "limits on development" in this case are self-imposed by the Applicant maintaining the golf course use on-site. Staff believes the limits on development

considered for this finding need to be related to imposed regulatory controls and guidelines, master plan directives (e.g., provision of a school site), and/or implementation of other public policy objectives specific to the site that might constrain the amount of development space on-site. Staff also points out that any MPDUs provided on-site are included in the amount of units proposed by the Applicant and are not in addition to the units proposed. Finally, Staff does not recommend approving the unit mix based on the Applicant's assertion of economic hardship. Not only does the regulation not provide economic hardship as a basis for approval of the requested unit mix, the Applicant has provided no proof of its alleged hardship. To grant the unit mix based on the Applicant's bald assertion of economic hardship would reduce the requirement for satisfying the MPDU Finding to nothing more than that.

CONCLUSION

Staff has reviewed this plan for consistency with Chapter 50, the Subdivision Regulations and Chapter 59 the Zoning Ordinance. Staff disagrees with the applicant on the basic issue of whether this plan is new development or what has been called by the Applicant, redevelopment. Staff firmly believes that this plan represents a new development and that it should, therefore, be subject to the same regulations as all applications submitted for review. Notwithstanding this issue, Staff continues to strongly oppose this proposal because of its environmental impacts as discussed in the exhaustive review outlined in this staff report. As the Board will recall, Staff position has not changed from the previous hearing, which also based denial on environmental reasons. A summary of the Environmental Planning Staff analysis from the February 25, 2005 staff report including legislative and regulatory basis for the recommendation is included in Appendix A.

If it is the determination of the Planning Board to consider approval of this plan, approval conditions will need to be developed and the following issues remain outstanding, and should be discussed.

Tivoli Lake Boulevard

One outstanding issue, the connection of Tivoli Lake Boulevard, continues to be strongly supported by staff. Transportation Planning staff has determined that Tivoli Lake Boulevard must be extended into the proposed site to provide a needed second point of primary access for the proposed development at Indian Spring. This recommendation is in accordance with the Kensington-Wheaton Master plan recommendations for this connection if the subject site is developed.

According to the 1989 *Master Plan for the Communities of Kensington-Wheaton* (page 98):

> *Indian Spring Access Road* (P-13) provides access to the Indian Spring Country Club. If and when redeveloped with another use, the Country

> Club should be provided with access from Layhill Road and Randolph Road. Access from Layhill Road should be provided by reconstructing the existing access road to the typical primary residential street standard. Access from East Randolph Road should be provided by extending the primary street named Tivoli Lake Boulevard. The internal street network of any such development should be continuous but designed with the idea of preventing a cut-through traffic movement between Layhill Road and Randolph Road.

Tivoli Lake Boulevard extension provides the additional primary access road that conforms to the Master Plan. It provides direct routes to travel between adjacent neighborhoods without using arterial routes, potentially reducing traffic on major highways. It provides an alternative primary route for emergency response from the south, and could potentially reduce the response time of emergency fire, rescue, and medical vehicles. Our assumptions are based on the starting point of the emergency vehicles at the intersection of Georgia Avenue and Randolph Road. Speed of the vehicles was assumed to be 35 miles per hour on Layhill Road and Randolph Road and about 20 miles per hour on internal streets of the site. It was assumed that there would be little or no average delays for the emergency vehicles at the intersections as these vehicles will be able to pass through the red lights. Our indication is that response time by emergency vehicles, based on those assumptions, could be reduced by more than 30 percent depending on the location of the site of the emergency.

It is also essential to provide a secondary access so if one access to the community is closed due to accidents or weather related emergencies, the traffic from the community could safely enter or exit the new development or emergency vehicles will have an alternative route to reach the community.

Staff analysis indicates that there is a very little chance that traffic traveling on Layhill Road or Randolph Road will cut through this neighborhood in order to save travel time. Staff has analyzed the travel time through the neighborhood, considering the speed and distance and concluded that there will be no travel time saved by travelers between the two major roads going through this neighborhood.

The extended Tivoli Lake Boulevard will reduce the distance by more than half for the residents of this community to reach the Glenmont Metro station as compared to reaching the same destination via Indian Spring Access Road and Layhill Road. This is an important factor for reducing the travel time for people living in the area to reach a major transit center. By extending this road, residents of the new development will be approximately a mile away from Glenmont Metro station. Otherwise, the distance will be more than two miles.

Approximately 355 daily trips from the subdivision will be traveling east on Randolph Road. If Tivoli Lake Boulevard is not connected, those travelers must travel an additional two miles via Indian Spring Access Road. That is a total of 670 additional vehicle miles per day. Over the course of ten years, that would be 1,675,000 additional

vehicle miles which would be consuming 76,000 gallons of gasoline and waste 84,000 hours of time for all those future trips made during the next ten years.

This discussion does not include all required transportation improvements. Attachment C includes the entire Transportation Planning memorandum.

Reservation of an Elementary School Site (Attachment D)

The applicant and the Montgomery County Public Schools (MCPS) have been working in cooperation to find a suitable location for a new elementary school site suitable to MCPS. The preferred site, located at the intersection of Queensgard Road and Layhill Road has proven somewhat problematic due to the discovery of wetlands. In a letter dated May 18, 2005 and received by staff on May 19, 2005 from the MCPS, they have asked that the Board to require that the applicant "identify a suitable elementary school site from within the Indian Spring development to be placed in reservation for an 18 month period." At this time, staff has not been provided with criteria for a suitable school site and, therefore, has little guidance for the Board on how this may impact the development proposal.

Attachment A – Feb. 25 staff report
Attachment B – May 10, 2005 letter
Attachment C – Transportation Planning memo
Attachment D – MCPS Letter
Attachment E - Preliminary Plan
Attachment F – Vicinity Map
Attachment G – Neighborhood Development Map

APPENDIX A

ENVIRONMENTAL PLANNNING STAFF ANALYSIS FROM THE FEBRUARY 25, 2005 STAFF REPORT INCLUDING LEGISLATIVE AND REGULATORY BASIS

The February 25, 2005 staff report (attached) discussed the regulatory basis for placing high priority for protection of environmental buffers and staff policies and practices on evaluation of proposed encroachments into these buffers. The following summarizes major points from that staff report:

I. Basis for Protection of Environmental Buffers in Land Development Projects -- Montgomery County Forest Conservation Law and Planning Board "Environmental Guidelines" (pages 5 – 7 of February 25, 2005 staff report)

- Streams, stream buffers, wetlands, wetland buffers, and floodplains comprise an environmental buffer. *These buffers are defined in the "Environmental Guidelines", which satisfy the State's mandate in the Maryland Economic Growth, Resource Protection and Planning Act of 1992 (Annotated Code of Maryland Article 66B –3.05-01(viii). This legislation requires local governments to establish a "sensitive areas element" protecting those sensitive resources a jurisdiction wants to protect from the adverse effects of development. In addition, the Montgomery County Forest Conservation Law (Sections 22A-12(b) and 22A-12(e)(3)) provides the highest priority for protecting and/or reforesting these areas as defined in the Planning Board's "Environmental Guidelines".* To conform with the directives of the Forest Conservation Law and "Environmental Guidelines", staff requires maximum use of planning and zoning options to protect environmental buffers during plan review. Staff evaluates a land development project to determine if it can first avoid use of and disturbance in buffer areas and, second, if that is not possible, to determine if it minimizes encroachments into these buffers.

- *If some buffer encroachment is determined to be necessary and unavoidable, and the encroachment has been minimized, staff then requires compensation for the encroachment.* The encroachment that is allowed is usually not forested, is a small area, usually along an edge of the buffer. Where encroachments are considered in these limited circumstances, the compensation is done with the objective of providing a clearly better resource value than would occur with the precise application of the standard buffer.

- *Compensation typically involves in-kind replacement near the area of impact at a 2:1 ratio.* Staff usually requires replacing buffer land and function lost to encroachment by protecting land that would otherwise not be protected in the same watershed, many times with afforestation also required. On a case-by-case, limited basis, staff has also accepted out-of-kind compensation (e.g., stream improvements). For Indian Spring, out-of-kind compensation has bee

proposed due to the large amount of compensation needed for the large encroachment.

III. Previous Staff Evaluation of the Proposed Indian Spring Preliminary Plan (see pages 7 – 21 of February 25, 2005 staff report)

- *The proposed golf course community is new development*, not re-development. The golf course will be significantly regraded to create a new 18-hole course. Over five hundred dwelling units with a new road network and other infrastructure facilities will be added. The preliminary plan is required to meet current regulatory requirements for new development of other agencies such as stormwater management controls (for both the residential and golf course components) and road design requirements. Therefore, consistent with staff's review process for new development, staff would recommend protection and restoration of the full environmental buffers as the first step in the review.

  It should also be noted that there are no special provisions for re-development in the "Environmental Guidelines". Existing environmentally-incompatible development does not justify future development being environmentally-incompatible. Staff looks prospectively at land development projects: not at what was or is, but what can and should be from an environmental and natural resource perspective. Staff may give special considerations to existing structures that will remain as part of a land development project, but the structures and features that are proposed to occur in the environmental buffer in Indian Spring are not existing ones.

- *The applicant indicates that a golf course is an environmentally beneficial use* because it provides large amounts of vegetated open spaces (i.e., pervious land). Therefore, golf course uses within a non-forested environmental buffer should be acceptable. *Staff disagrees with this analysis.* Golf courses in the environmental buffers displace land identified in the Forest Conservation Law as highest priority for reforestation. Forest provides greater wildlife and water quality benefits than golf fairways. Golf courses require use of fertilizers and pesticides that can be detrimental to native plant and animal life and to stream quality, particularly if the use is located within environmental buffers and near or in streams, wetlands, and floodplains. While golf fairways are vegetated, they are designed to promote quick runoff or water from, not natural infiltration into, these vegetated areas to maximize playable area; this condition is contrary to the natural resource objective of promoting groundwater infiltration.

- *Staff believes that, unlike Indian Spring, the Fairland project achieves several public purpose objectives that justify relaxing the standard practice and requirement of protecting the full environmental buffers:* a new on-site public elementary school site; a subdivision that achieves the Fairland Master

Plan's explicit recommendation for a golf course community containing predominantly one-family detached units; a new public golf course that replaces an old, outdated, and substandard one; and measures conforming to master plan recommendations to restore and control highly degraded industrial sites. *Staff believes that the Fairland golf course community has minimized encroachments into environmental buffers as much as possible given the multiple master plan and public purpose objectives it must meet.* In contrast, the Indian Spring site is proposed to include only private use facilities that are not explicit in recommendations of the Kensington/Wheaton Master Plan: a private golf club accessible by membership or tournament invitation only and a private clubhouse/conference center available for rental.

- *Staff believes the 36 acres (as shown on the preliminary plan at the 3/3/05 Planning Board hearing) of proposed buffer encroachment are excessive, and much of this encroachment could be avoided if the subdivision is substantially altered.*

IV. Previous Staff Determination of Acceptable Measures to Compensate for Environmental Buffer Encroachment

- *If this magnitude of buffer encroachment (36 acres) is to occur, the typical staff practice of requiring land replacement in the watershed of impact at the rate of 2:1 for compensation is not feasible. Therefore, staff crafted an alternative method for defining acceptable compensation for buffer encroachments that is more flexible than the standard 2:1 practice but that still follows certain principles:* higher value is given to compensation that is close to the area of impact than compensation that is further away; and, land that is clearly greater in value or function than the existing or potential natural resource value of the buffer displaced by the encroachment has high value for compensation.

- *The compensation credit ratios are defined in a way to be consistent with ratios set forth in the Forest Conservation Law for mitigating forest loss.* In the law, planting forest and protecting the planted land results in a 1:1 credit (e.g., protecting one acre of land and planting that land in forest equals one acre of reforestation). Protecting land that already has forest results in a 2:1 credit (e.g., protecting two acres of existing forest counts as one acre of reforestation). Staff uses these ratios, and multiples of these ratios, to establish the buffer encroachment compensation credit ratios. (see pages 11 – 14 of February 25, 2005 staff report)

Staff believes the applicant's proposed measures do not fully compensate for the 36 acres of environmental buffer encroachment. This conclusion is based on applying either method of compensation criteria: staff's general practice of using a 2:1 land replacement rate, or, staff's more flexible, two-step method that is explained in the February 25, 2005 staff report. The applicant disagrees and believes that its proposed compensation

measures exceed staff's required credits (see pages 14 –21 of February 25, 2005 staff report).