

55 either by dedication to parkland or] by application of an
56 easement or covenant in a recordable form approved by the
57 Planning Board. The easement or covenant must restrict uses in
58 the rural open space area to those [set forth in this zone] uses
59 allowed under 59-C9.572, [establish procedures] provide for the
60 management of any natural or agricultural features [as set forth]
61 in accordance with the approved site plan, and prohibit any
62 [further] development or subdivision within the rural open
63 space area not expressly authorized.

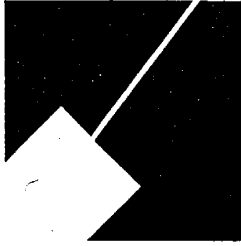
64 * * *

65 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
66 date of Council adoption.

67
68 This is a correct copy of Council action.

69
70
71
72 _____
73 Linda M. Lauer, Clerk of the Council

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

February 23, 2006

To: Greg Russ
Development Review Division

Via: John A. Carter, Chief *JAC*
Community-Based Planning Division

From: Frederick Vernon Boyd *FVB*
Community-Based Planning Division

Subject: Zoning Text Amendment 06-04—Rural Neighborhood Cluster Zone

Zoning text amendment 06-04 proposes two modifications of the Rural Neighborhood Cluster (RNC) Zone. The text amendment proposes to: 1) require that master plans recommend the use of rural open space for large one family lots; and 2) require easements for all land—private or public—that is included as rural open space. This memorandum offers background on the use of the Rural Neighborhood Cluster (RNC) Zone in four recently approved or pending master plans.

Background

This section offers a brief summary of the zone's use in Potomac, Olney, Upper Rock Creek and Damascus.

Potomac

The Potomac Subregion Master Plan, approved in March 2002, makes a single recommendation for the Rural Neighborhood Cluster Zone. The Plan recommends the RNC Zone for four contiguous parcels, the Tipton, Piney Grove, Weihe and Semmes properties, which total almost 145 acres and are located along Glen and Piney Meetinghouse roads in the Travilah section of the subregion. The Plan recommends that 70 percent of the properties be retained as open space and that larger than minimum stream buffers be provided wherever feasible. The Plan also recommends a maximum of 62 lots on the

properties and that 60 acres in the Lower Greenbriar Branch stream valley be dedicated as parkland.

The properties have passed through the development process and two lots, totaling 64 acres, are shown for dedication to parkland, as the Plan recommended. Both lots are included in the rural open space calculations required as part of the development process. They have not been formally conveyed for public parkland, pending resolution of several violations of Department of Permitting Services regulations and the removal of temporary facilities, such as sediment traps.

Upper Rock Creek

The 2004 Upper Rock Creek Area Master Plan recommended four properties for the Rural Neighborhood Cluster Zone. The Plan specified a density of 0.33 units to the acre, with a recommended density of 0.4 units to the acre if Moderately Priced Dwelling Units were required as part of a development. The Plan did not recommend specific percentages of open space for the four properties.

All four properties recommended for the RNC Zone are adjacent to existing stream valley parks. The Plan recommends dedication as public parkland for the entire Dungan property, as well as parts of the Casey and Freeman properties, which are adjacent to North Branch Stream Valley Park. Areas of the Woodlawn property are adjacent to Rock Creek Stream Valley Park and are recommended for dedication as public parkland as well.

Two of the four properties have passed through the development process. The Freeman and Woodlawn properties include a total of approximately 264 acres of parkland dedication. This land is included in the rural open space calculations. The combined Casey and Dungan properties have begun, but not yet completed, the preliminary and site plan processes. These properties include about 262 acres of parkland, all of which is included in the rural open space calculations.

Olney

The Olney Master Plan, approved in 2005, recommends the Rural Neighborhood Cluster Zone for 35 properties. The Plan recommends a density of 0.33 units to the acre for the majority of those properties. For six properties, the Plan recommends the RNC Zone, but does not recommend community sewer service, which limits allowable density to 0.2 units to the acre. For one property, the Norbeck Country Club, the Plan recommends a density of 0.45 units to the acre.

The Plan recommends parkland acquisition on four properties. One, the Simms property, is designated for acquisition through the Legacy Open Space program. The Plan recommends that a portion of the Casey property adjacent to Farquhar Middle School be designated as rural open space and dedicated as parkland for

active recreation. Two other properties are adjacent to Olney Manor Park and are recommended for complete or partial acquisition as parkland. They have not been identified as rural open space.

Damascus

The Planning Board Draft Damascus Master Plan makes extensive use of the Rural Neighborhood Cluster Zone, and recommends creation of a separate RNC/TDR Zone so that transferable development rights can be used in the resulting development. The Plan recommends the RNC/TDR Zone for six properties—the Burdette, Stanley-Leishear-Day, Casey-Lewis, Warfield, Kingstead-Leishear and Smart-Miner-Rice-Conway properties. For each, the Planning Board Draft plan recommends a base density of 0.4 units to the acre. Densities of one unit to the acre would be permitted with the purchase of TDRs.

The Draft Master Plan delineates specific areas for dedication as public parkland on the Kingstead-Leishear and Warfield properties.

Analysis

Rural Open Space

Of the five properties recommended for the RNC Zone in the approved Potomac and Upper Rock Creek master plans, two of them—the Potomac properties and the Freeman property in Upper Rock Creek—have been approved for development. The Potomac properties are well into the construction phase; approvals for the Freeman property are under legal challenge precisely because no easements have been recommended for rural open space dedicated as parkland. The Woodlawn property in Upper Rock Creek, which also has approved development plans, is being considered for purchase by the State Highway Administration; refinements to the design for the Intercounty Connector have resulted in a proposed alignment that bisects the property and greatly reduces its development potential.

Approval of the text amendment would directly affect development of the remaining RNC parcel in Upper Rock Creek, the Casey-Dungan properties, which include 262 acres of land proposed for park dedication. As noted above, the land proposed for parkland is adjacent to existing stream valley parkland and is not envisioned for recreational uses beyond trails. It should also be noted that the areas proposed as parkland are not included in the sewer envelope; the Plan explicitly discourages sewer lines in the tributaries that drain these areas.

The majority of land recommended for parkland acquisition in Olney would be unaffected by this text amendment. Existing language in the Zoning Ordinance allows master plans to recommend areas that can be designated as rural open space and used for active recreation. The Legacy Open Space program may

acquire a second property. Two properties are recommended for acquisition to add to existing active parkland. These properties would be affected by the proposed text amendment only if they are included in an assemblage with adjoining properties also in the RNC Zone.

In Damascus, approval of the text amendment would directly affect areas on the Kingstead-Leishear and Warfield properties.

Conservancy Lots

The approved Potomac, Upper Rock Creek and Olney plans do not recommend residential development using large lots that would contribute to the open space. Nor does the draft Damascus Master Plan. Already approved development plans in Potomac and Upper Rock Creek cannot be affected by this text amendment. Should the text amendment be approved, the Council would have to evaluate the individual proposals in Damascus and determine which, if any, are appropriate for large lot residences. In the absence of detailed development plans, which may not be available, it is not immediately clear how this would be done. In Olney, future subdivisions in the RNC Zone would be precluded from using conservancy lots because the Olney plan does not recommend them.



Memorandum

To: Greg Russ, Zoning Analyst

From: Piera Weiss, Community-Based Planning

Subject: Text Amendment ZTA 06-04 *aw*

Date: 2/17/2006

The RNC zone was originally created in 1998 for application in the Sandy Spring/Ashton Master Plan. The intent of the zone was to preserve open space for historic (Rural Legacy Trail), visual and farming purposes. Specific properties zoned RE-2 that contained conditions unique to master plan area, such as having historical importance or were actively used in agriculture, were rezoned to the RNC.

The RNC zone allowed development with water and sewer (the properties were formerly zoned RE-2 and not eligible for public water and sewer) to encourage clustering and provide the vast majority (70 – 85%) of the property to be set aside as rural open space that could be used for farming or as an historic setting for the Rural Legacy Trail or to preserve the agricultural character of the master plan area. It was intended that the rural open space, created by the use of cluster, would be restricted in perpetuity to specific uses described in easements.

The amount of rural open space (described as a percentage) and the maximum number of housing units for the individual properties was expressly outlined in the master plan. The total number of units, in some cases less than would be expected, was placed in a table so that there would be no debate regarding number of units. MPDUS were specifically not included in the requirements of the zone since there was an inherent conflict between desired density, the arrangement of lots with respect to specific site features and environmental issues, and allowing for additional bonus densities.

The zone recommended a range of lots, from conservancy lots to 6,000 square feet. Conservancy lots were lots for which the total acreage, minus the area designated for a house, could be used to as part of the rural open space

calculation. The master plan did not distinguish where the different types of lots needed to be used on which property.

There was always an issue with the Sandy Spring community as to the future viability of rural open space. There was a concern that dedication as parkland was not the best possible way to ensure perpetuity as rural open space. The master plan did not recommend any rural open space for parkland but rather suggested that other mechanisms be considered to preserve the rural open space such as easements to a third party to insure that the rural open space would be forever protected.

The master plan did propose parkland on one property in the RNC zone, which was adjacent to Sherwood High School and the Historic Sandy Spring (Alfandre Property). However, it was clearly stated that in this case the purpose was to provide ball fields (10 acres) and to buy down density (30 acres) on the property. MNCPPC purchased 40 acres to achieve that master plan goal. The land was acquired by payment and not through dedication.

Since 1998, other master plans have used the RNC zone and have amended the zone to suit the intent of these master plans. This has created problems for the Sandy Spring/Ashton Master Plan. Properties embarking on the development process must conform to the current zone. On one property (Danshes), MPDUS had to be provided in excess of the maximum density recommended in the master plan.

The problem(s) this text amendment is addressing appears to have arisen from issues related to the other master plans that used and amended the zone since 1998. A better approach might be to understand the issues and then determine how those issues can be addressed through other mechanisms, not by wholesale changes to the RNC zone. All of the changes have negated the original intent and purpose of the zone as applied in Sandy Spring. Perhaps a better solution should have been a new zone for the subsequent master plans.

The following are specific points with respect to the proposed changes:

Sec 59.C.9.572:

This language change affects RNC zone properties in the Sandy Spring/Ashton Master Plan. The Sandy Spring/Ashton Master Plan does not restrict the use of conservancy lots to specific properties. The use of conservancy lots on property derives from the provision of the zone as approved in 1998, not the master plan.

Sec C-9.574 wishes to require easements on parkland. As stated before, the only parkland designated in the Sandy Spring/Ashton Master Plan area was purchased. In general, parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in

a master plan is to provide for future acquisition of parkland for public use and purpose. The use and purpose may of change over time. Easements would present a future problem.

Testimony for Zoning Text Amendment 06-04 - March 7, 2006, Agenda Item #10

Dear Councilmembers:

Greater Sandy Spring Green Space (GSSGS) is a local land trust incorporated in 1998 to promote and ensure the preservation, protection, and balanced use of open space and natural resources within eastern Montgomery County in perpetuity. We currently hold easements on 135 acres of land. This doesn't sound like much, but we are part of a national commitment to land conservation and 33,276 acres have been protected in Maryland alone through private easement donations to groups like Green Space. Locally, Councilmember Floreen recently asked for and received an accounting of land preservation efforts in Montgomery County, and it looks impressive.

However, we need to acknowledge that looks are not everything. Today we are here to ask you to make a real commitment to land conservation and require that open space that is set aside through the RNC zoning development process will be open space forever. With the requirement of perpetual conservation easements to third parties such as GSSGS, you will be letting the public know that looks are not deceiving, and that you stand up to create a legacy that will be treasured by your grandchildren and their grandchildren.

We're perplexed that the Planning Board refuses to stand up for this principal, since Green Space holds a conservation easement on Park property in Sandy Spring. This easement protecting 50 acres of land in perpetuity was done in the spirit of creating the Master Plan vision for Sandy Spring, while acknowledging community suspicion that our government might not hold to that vision over time. In the same vein, GSSGS once had a speaker at our Annual Meeting who noted that, while his gift of an easement on his property tied his hands, he was glad it did so he couldn't be tempted by rising prices to develop his land. He acknowledged the sense that there are temptations to stray from a vision, and spoke of the really good tools we have to assure that we don't stray.

Please take the step and ensure that the major public amenity in the RNC development of our last few remaining large parcels of land in the County will not fall to some future temptation. This will be a great step for our county, where we can join in this national commitment to reach a balance with the built and natural environment. Please vote for this ZTA.

Greater Sandy Spring Green Space, Robin D. Ziek, Vice President, Board of Directors, 3/7/06

ATTACHMENT SIX

theOlneyCoalition

preserving the quality of life in Olney

March 7, 2006

Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

Dear President Leventhal and Councilmembers,

The Olney Coalition is an umbrella organization of nine citizens' associations representing more than 2500 households. We support ZTA 06-04 in order to protect Rural Open Space in perpetuity.

The RNC zone traded guaranteed yields for development by providing clustered housing on sewer in areas traditionally large lot septic development for preservation of rural open space in perpetuity. It turns out that the two letter word **or** has a huge impact as evident in "rural open space area must be preserved in perpetuity as rural open space either by dedication to parkland **or** by application of an easement" Park & Planning legal staff will not pursue an easement because the word **or** means the land does not have to be put into an easement.

Planning staff feels that the designation of parkland is sufficient to protect the open space. The community disagrees and wants to be confident that the rural open space will never be subjected to the whims of future County Councils as master plans are updated, land use recommendations are changed, or ZTAs redefining open space are contemplated.

Dedication of the open space to parkland does not guarantee it will remain untouched. For example, skate parks, ice rinks, even schools (such as Sequoyah ES) have been built on parkland. Without further restrictions, the open space is at risk. ZTA 06-04 has been introduced to insure the zone is implemented the way it was intended.

Last week the Planning Board had discussions on how an easement restricts the government and that eminent domain can still be used to take the land for public use. In this scenario, there is a defined process with a decision made outside the political arena. The Planning Board also pointed out that parkland is not used for other purposes without careful consideration. Nobody can predict what the future pressures will be and an easement adds another layer of protection. Approve ZTA 06-04.

Sincerely,

Barbara Falcigno
President, the Olney Coalition



March 7, 2006

5104 Elm St., Bethesda MD 20814 (301)652-6359 email--theelms518@earthlink.net

TESTIMONY TO COUNTY COUNCIL ON ZTA 06-04, CHANGES TO RNC ZONE

I am Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation. I am testifying in support of Zoning Text Amendment 06-04, legislation to amend the Rural Neighborhood Cluster (RNC) Zone category. We strongly endorse this proposal to require that all publicly held or privately held land in the rural open space area of the RNC Zone be preserved in perpetuity by easement or covenant.

When the RNC Zone category was created, the justification for allowing the clustering together of homes on lots smaller than required under prior zoning was that such clustering would prevent new homes built on one or two acre plots from dotting the rural landscape. In this way, the same density of housing might be achieved as was allowed under previous zoning, but clustering would achieve the added goal of retention of larger land areas in rural open space to help protect the environment from more widespread impervious surface development, to sustain and improve water quality, to preserve trees in order to sustain and improve air quality, and to retain the rural character of these areas by preserving scenic rural vistas.

All of the above goals, which were touted as objectives of the RNC Zone when it was created, are undermined when RNC rural open space is used as it was when the county built Sequoyah Elementary School in Bowie Mill Park. This proposed ZTA will guarantee that the promises made to the residents of Ashton, Upper Rock Creek, and other areas where RNC zoning is applied, will be kept and that rural open space land will be retained, the environment protected, and rural vistas preserved.

The preservation of rural open space in perpetuity as proposed by ZTA 06-04 will provide predictability to the planning process in rural areas, and predictability in land use planning and zoning is something that is desired by residents all across the county. We thank Councilmember Praisner for introducing this legislation and urge the Council to approve ZTA 06-04. Thank you.

Daniel, Debra

From: Troutner, Dave [Dave.Troutner@nasd.com]
Sent: Friday, May 12, 2006 12:28 PM
To: Daniel, Debra
Subject: FW: ZTA 06-04 - PHED Committee Meeting on Monday, April 3rd

Fyi

From: Troutner, Dave
Sent: Thursday, March 30, 2006 2:10 PM
To: 'councilmember.silverman@montgomerycountymd.gov'; 'councilmember.floreen@montgomerycountymd.gov'; 'councilmember.praisner@montgomerycountymd.gov'
Cc: 'councilmember.leventhal@montgomerycountymd.gov'; 'councilmember.andrews@montgomerycountymd.gov'; 'councilmember.knapp@montgomerycountymd.gov'; 'councilmember.denis@montgomerycountymd.gov'; 'councilmember.subin@montgomerycountymd.gov'
Subject: ZTA 06-04 - PHED Committee Meeting on Monday, April 3rd

Dear Council Members, PHED Committee Chairman Silverman, and Committee Members Floreen and Praisner:

The Montgomery County Zoning Ordinance, Rural Neighborhood Cluster Zone, Section 59-C-9, sets forth the intent of the Rural Neighborhood Cluster zone for **"...preserving environmentally sensitive natural resources to the maximum extent possible..."** and defines **Rural Open Space** as **"...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."**

In the Memo dated March 2, 2006 from the MNCPPC Planning Board to the County Council regarding ZTA 06-04, the Planning Board argues that private land trusts, even when created for salutary purposes, over time may experience leadership changes, contests over control, financial or legal difficulties, and even dissolution. Open up the newspapers and you understand why that is exactly the concerns the citizens of Montgomery County have about the present and future Planning Board and staff. Don't forget to throw in the County's perpetuating population explosion, land scarcity, developer's interests, and the reality of such influences on County politics and legislation.

You may take it personally or not, but please do understand that it is true that promises by the County have been broken. For example, ten years ago the County promised to the Upper Rock Creek community that sewer would never be extended beyond the new Sequoyah Elementary School built on parkland in the watershed area that was protected by RE-1 and RE-2 zoning. That promise was broken with recent Master Plan revisions proliferating RNC.

In the Memo dated February 24, 2006 from MNCPPC Planner Greg Russ to the Planning Board, the "analysis" on Rural Open Space completely ignores the written intent of the RNC law. The Planning staff concludes that the onus is on Master Plans to protect the designated Rural Open Space land in its natural state without human intervention in perpetuity. As the citizens of Upper Rock Creek are now starkly aware, there is nothing permanent about a Master Plan. Even when an overwhelming majority of the population of a Master Plan area stands up in opposition to a proposed aspect of a revision, the Planning Board and County Council can have their will based upon the often fleeting influences of the times. Mr. Russ's Memo cites the new RNC developments in various stages of the process and suggests that the RNC code should not be fixed because too much is already in

5/12/2006

motion. As a tenured regulator, investigator, and enforcer of rules and law, I have seen many instances of when an organization attempts to legitimize deficiencies instead of fixing the problem and mitigate the impending harm. When gone unchecked and uncorrected, it results in aggravated harm through negligence, and the convergence of the underlying problem and the public's outrage -- a scandal. I am not being cute. This should be considered during your PHED Committee meeting.

On page six of Mr. Russ's Memo, they take the position that Park and Planning's role as the "public servant and stewards of the land" is to implement zoning ordinance to ensure that the uses described and limited are adhered to. Yet, no place in that Memo (or the packet it is in) does Park and Planning provide an instrument that will assure the public parkland that has been conveyed to the County as designated Rural Open Space will be preserved permanently in its natural state for uses described and limited to in the RNC code at the time of the dedication.

On the contrary, the Planning Board and staff admit that they are attempting to take control of the dedicated Rural Open Space land in a manner that keeps their "options" open for potential future purposes and uses. Well, options are speculative, and their actions have already been in violation RNC law, and certainly not in the best interest of the subject environmentally sensitive wetlands, and not in the best interest and desire of the citizens who know enough about this and have taken the time to share with you their consensus. And that is why privately held easements on the publicly owned Rural Open Space are required. With out the added protection of the easement, there is no stewardship on the intent of assuring the preservation is in perpetuity, and there is no entity that can legally challenge attempts by the County to renege on the intention of RNC, which is a trade off between the cluster development (with sewer, doubled the density yield, and stormwater accountability hazards) and the purportedly mitigating buffer and character preservation that Rural Open Space subject to an instrument (conservation easement) assuring perpetuity would provide. Without the conservation easements on all Rural Open Space land, the citizens of Montgomery County have been shammed by the introduction of RNC into our Master Plan areas.

The only development that has used RNC to fruition is Ashton Preserve (Site Plan 8-00009) in Sandy Spring. The County (MNCPPC) became owner of 50 acres, and due to the same need for assurances expressed herein, the Sandy Spring community established the Greater Sandy Spring Green Space, Inc. ("GSSGS"), a non-profit organization, to hold the perpetual conservation easement to protect the natural resources on that land. The easement was conditioned in the Site Plan approval, and they worked with the developer and Park and Planning on the document. Certain properties currently proposed for RNC development are within GSSGS's radius and the organization is ready, willing and able to hold the easements.

The necessity for such protection by easements on new RNC developments has been repeatedly advocated as critical by civic associations in Upper Rock Creek and Olney throughout our recent Master Plans revisions in which the use of RNC has been introduced. Unfortunately, out of self interest, the Planning Board and staff have ignored and obstructed our persistent overture to reach the natural and legally required resolution of using instruments, such as conservation easements, to assure the perpetuity of Rural Open Space. The developers of the new RNC properties have stated that they do not factor preserving environmentally sensitive natural resources to the maximum extent possible, the public interest, or the better good into their position on this subject. Rather, I have been told by a developer's attorney that his client's bottom line business interest is to side with the Planning Board, because after all, the Planning Board must approve the subject development and every future development they endeavor in Montgomery County. From a citizen's perspective, this is the tail wagging the dog.

The Montgomery County Council can set this right with ZTA 06-04 which will assure that all publicly or privately held land that is RNC designated as Rural Open Space be preserved in perpetuity by application of an easement or covenant that restricts uses in the Rural Open Space area to those uses under the RNC ordinance at the time of site plan approval, and prohibit any future development or subdivision within the Rural Open Space area not expressly authorized at the time of the site plan approval.

I, along with several other civic representatives, will be at the PHED Committee meeting on Monday. I assume that you would not engage in extensive debate on this subject with the MNCPPC staff without the inclusion of the consensus position advocated by your citizens.

David R. Troutner
19101 Artesian Court

Derwood, MD 20855

301-351-3891

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Daniel, Debra

From: Troutner, Dave [Dave.Troutner@nasd.com]
Sent: Friday, May 12, 2006 12:21 PM
To: Daniel, Debra
Subject: FW: Permanent Protection for Rural Open Space Land

fyi

From: Bob DeGroot [mailto:Bobdegroot@comcast.net]
Sent: Monday, March 06, 2006 9:41 AM
To: Councilmember.Andrews@montgomerycountymd.gov; Councilmember.Denis@montgomerycountymd.gov;
 Councilmember.Floreen@montgomerycountymd.gov; Councilmember.Knapp@montgomerycountymd.gov;
 Councilmember.Leventhal@montgomerycountymd.gov; Councilmember.Perez@montgomerycountymd.gov;
 Councilmember.Praisner@montgomerycountymd.gov; Councilmember.Silverman@montgomerycountymd.gov
Subject: Permanent Protection for Rural Open Space Land

Dear Council Members:

ZTA 06-04 has been introduced to amend the Montgomery County Zoning Ordinance, Rural Neighborhood Cluster Zone. Specifically Section 59-C-9.574(h)(4) should be amended to clarify and make that section consistent with the law's purpose and intent

Any development plan opinion and approval by the Planning Board that does not require the maximum extent of protection by the placement of an instrument, such as a conservation easement, on a Rural Open Space tract, whether privately or publicly owned, that will assure its preservation is permanent, is a violation of the Sections 59-C-9.23.1 and 59-C-9.573(b).

Section 59-C-9.23.1 sets forth the intent of the Rural Neighborhood Cluster zone for ***"...preserving environmentally sensitive natural resources to the maximum extent possible..."*** and Rural Open Space is defined in Section 59-C-9.573(b) as ***"...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."***

The conveyance of such tracts to the Planning Board (MNCPPC) without a conservation easement does not serve to effectuate the legislative intent, because the designated Rural Open Space land would not be protected from any desired change in use by the current or future Planning Board and/or County Council. The Planning Board has already violated this law, as they recently issued a final Opinion on The Reserve at Fair Hill site plan that takes the position that the language of the zoning text does not require a written instrument (easement or covenant) on the publicly owned land that will assure the Rural Open Space is permanent.

The County is attempting to take hundreds of acres of Rural Open Space from RNC development that, without conservation easements, can possible be traded, sold, or used for other purposes in the future.

The Maryland Alliance for Greenway Improvement and Conservation respectfully requests ZTA 06-04 be adopted, and any tract of land acquired by the County from developers for Rural

5/12/2006

Open Space have permanent conservation easements attached to it before title is conveyed to the county.

Sincerely,

Robert DeGroot, President

Maryland Alliance for Greenway Improvement and Conservation

301-340-8348

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Daniel, Debra

From: Troutner, Dave [Dave.Troutner@nasd.com]
Sent: Friday, May 12, 2006 12:02 PM
To: Daniel, Debra
Subject: FW: Protect Open Space In RNC Developments

fyi

From: Nmcaprexy@aol.com [mailto:Nmcaprexy@aol.com]
Sent: Sunday, February 26, 2006 7:16 PM
To: councilmember.andrews@montgomerycountymd.gov; councilmember.denis@montgomerycountymd.gov; councilmember.floreen@montgomerycountymd.gov; councilmember.knapp@montgomerycountymd.gov; councilmember.leventhal@montgomerycountymd.gov; councilmember.perez@montgomerycountymd.gov; councilmember.praisner@montgomerycountymd.gov; councilmember.silverman@montgomerycountymd.gov; councilmember.subin@montgomerycountymd.gov
Subject: Protect Open Space In RNC Developments

Dear Council Members: The Norbeck Meadows Civic Association requests that you:

- (1) Use your good offices to encourage the Planning Board to reconsider and amend the Reserve at Fair Hill Site Plans (1-04110 and 8-05028) so as to condition the approvals on written easements or covenants on all of the Rural Open Space, including publicly owned acres, which will effectually legally prohibit any further uses, development or subdivision in perpetuity, and preserve these areas in their natural state.
- (2) Adopt into law RNC ZTA 06-04 to support clarification of the inconsistent wording in the law by explicitly and clearly requiring all publicly held land in the rural open space of the RNC zone be preserved in perpetuity by application of easement or covenant that restricts the uses of the current law and provides and prohibits any uses, development or subdivision within the rural open space area not expressly authorized.

Thank you for your attention.

Arnold Gordon

President, Norbeck Meadows Civic Assoc.

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5/12/2006

please notify the sender by replying to this message and delete this email immediately.

Espy S. Driscoll
Bowie Mill Civic Association
5712 Foggy Lane
Derwood, MD 20855
(301) 869-9287 e-mail: espy-driscoll@verizon.net

January 13, 2006

Chairman Derek Berlage
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD

Issue: A legal instrument/covenant is required to protect open space land in its natural state in perpetuity that is dedicated to MNCPPC as public parkland as a result of the RNC zoning code. Preliminary Development Plans for The Reserve at Fair Hill and the Casey/Dungan properties should not be approved until this requirement is in place.

Dear Chairman Berlage and Commissioners of the Montgomery County Planning Board,

The Upper Rock Creek communities participated actively and aggressively over a span of five years in the revision of the Upper Rock Creek Master Plan. Our primary goals were to protect sensitive environmental resources, maintain the high quality of our water, and keep the low density, semi rural character of the area. We felt that the best way to do this was to maintain the area as a residential wedge as laid out by the General Plan Refinement and remain on septic and well under the existing RE 1 and RE 2 zoning. The Planning Board and Council overruled the residents of Upper Rock Creek and voted for sewer and cluster development with a change to RNC zoning, thereby increasing the density and changing the semi rural character of the area.

The Planning board and Council reasoned that clustering units on small lots and dedicating large, contiguous parcels of open space as parkland to the county was a better way to protect and preserve our sensitive environmental resources. The intent was to preserve this rural open space in its natural state in perpetuity. Throughout all of the meetings, Planning Board and Council work sessions, and Public Hearings, both the Planning Board and the Council assured us that the rural open space dedicated to the county as parkland would remain in its natural state in perpetuity.

This intent is clearly stated in the revised 2004 Upper Rock Creek Master Plan, page 7: **“A primary goal of the Plan is to protect environmental resources and maintain stream quality by keeping streams, forests and wetlands in a natural state.”** It is further stated... **“To extend the open space heritage and preserve resources, this Plan--- increases open space through dedication, acquisition, or easement as land develops and recommends that options be explored that this land will be protected in perpetuity.”**

This intent is also stated in the RNC zone text amendment No: 04-17 : **“All land in the rural open space must be preserved in perpetuity, either by dedication to [public**

use] parkland or by application of an easement or covenant in a recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space to those set forth in this zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan and prohibit any further development or subdivision within the rural open space area.”

Rural open space that goes into private ownership is preserved and protected by a “Conservation and Open Space Easement Agreement” that sets binding conditions and restrictions that make up a covenant that accompanies the title/deed as it passes from owner to owner.

Apparently, the MNCPPC legal staff has interpreted the above RNC text statement to mean that no easement or covenant is necessary (and also not required by law) to preserve the rural open space land dedicated to the county as public parkland in its natural state in perpetuity. The staff recommended against easements or covenants over publicly held land. This is clearly a loop hole that needs closing.

How then will this open space that has been dedicated as parkland be protected throughout future generations and by future Planning Boards and Councils? What prevents it from being subdivided, used as a school site or being sold to developers? Dedication of rural open space land as parkland in no way ensures its preservation or protection.

All RNC rural open space must be preserved in its natural state in perpetuity. Whether the rural open space land is to be held privately or publicly, there must be legally binding easements or covenants that convey with the land. Rural open space land that is dedicated as public parkland must also be protected by easements or covenants.

Please amend the RNC zoning text language to state that **“All land in the rural open space either privately held or publicly held as parkland must be preserved in its natural state in perpetuity by application of an easement or covenant in recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space to those set forth in this zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan and prohibit any further development or subdivision within the rural open space area.”**

This must be made to apply to the rural open space of The Reserve at Fair Hill and of the Casey/Dungan properties. Approval of preliminary development plans should be made contingent on these easements and covenants being in place and agreed upon. They also need to be applied to the Woodlawn property.

Sincerely,

Espy S. Driscoll
Bowie Mill Civic Association
5712 Foggy Lane
Derwood, MD 20855

Daniel, Debra

From: Troutner, Dave [Dave.Troutner@nasd.com]
Sent: Friday, May 12, 2006 11:52 AM
To: Daniel, Debra
Subject: FW: Open Space in RNC Zones

From: Nmcaprexy@aol.com [mailto:Nmcaprexy@aol.com]
Sent: Saturday, January 14, 2006 10:51 AM
To: MCP-Chairman@mncppc-mc.org
Cc: espy-driscoll@verizon.net; espys@attglobal.net; Troutner, Dave;
councilmember.floreen@montgomerycountymd.gov; councilmember.knapp@montgomerycountymd.gov;
councilmember.leventhal@montgomerycountymd.gov; councilmember.perez@montgomerycountymd.gov;
councilmember.praisner@montgomerycountymd.gov; councilmember.silverman@montgomerycountymd.gov;
councilmember.subin@montgomerycountymd.gov; councilmember.andrews@montgomerycountymd.gov;
councilmember.denis@montgomerycountymd.gov
Subject: Open Space in RNC Zones

NORBECK MEADOWS CIVIC ASSOCIATION
P.O. BOX 441
OLNEY, MARYLAND 20830

January 13, 2006

Chairman Derek Berlage
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD

Re: Open Space to be kept in its Natural state in a RNC Zone

Dear Chairman Berlage and Commissioners of the Montgomery County Planning Board,

The Upper Rock Creek communities participated actively and aggressively over a span of five years in the revision of the Upper Rock Creek Master Plan. Their primary goals were to protect sensitive environmental resources, maintain the high quality of our water, and keep the low density, semi rural character of the area. It was felt that the best way to do this was to maintain the area as a residential wedge as laid out by the General Plan Refinement and remain on septic and well under the existing RE 1 and RE 2 zoning. The Planning Board and Council overruled the residents of Upper Rock Creek and voted for sewer and cluster development with a change to RNC zoning, thereby increasing the density and changing the semi rural character of the area.

The Planning board and Council reasoned that clustering units on small lots and dedicating large, contiguous parcels of open space as parkland to the county was a better way to protect and preserve our sensitive environmental resources. The intent was to preserve this rural open space in its natural state in perpetuity. Throughout all of the meetings, Planning Board and Council work sessions, and

5/12/2006

Public Hearings, both the Planning Board and the Council assured us that the rural open space dedicated to the county as parkland would remain in its natural state in perpetuity.

This intent is clearly stated in the revised 2004 Upper Rock Creek Master Plan, page 7: **“A primary goal of the Plan is to protect environmental resources and maintain stream quality by keeping streams, forests and wetlands in a natural state.”** It is further stated... **“To extend the open space heritage and preserve resources, this Plan--- increases open space through dedication, acquisition, or easement as land develops and recommends that options be explored that this land will be protected in perpetuity.”**

This intent is also stated in the RNC zone text amendment No: 04-17 : **“All land in the rural open space must be preserved in perpetuity, either by dedication to [public use] parkland or by application of an easement or covenant in a recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space to those set forth in this zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan and prohibit any further development or subdivision within the rural open space area.”**

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How then will this open space that has been dedicated as parkland be protected throughout future generations and by future Planning Boards and Councils? What prevents it from being subdivided, used as a school site or being sold to developers? Dedication of rural open space land as parkland in no way ensures its preservation or protection.

All RNC rural open space must be preserved in its natural state in perpetuity. Whether the rural open space land is to be held privately or publicly, there must be legally binding easements or covenants that convey with the land. Rural open space land that is dedicated as public parkland must also be protected by easements or covenants.

Please amend the RNC zoning text language to state that **“All land in the rural open space either privately held or publicly held as parkland must be preserved in its natural state in perpetuity by application of an easement or covenant in recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space to those set forth in this zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan and prohibit any further development or subdivision within the rural open space area.”**

This must be made to apply to the rural open space of The Reserve at Fair Hill and of the Casey/Dungan properties. Approval of preliminary development plans should be made contingent on these easements and covenants being in place and agreed upon. They also need to be applied to the Woodlawn property.

We believe that the RNC Zone designation to other sites in the county will be similarly affected and ask that you see to the correction of this.

Sincerely yours,

Arnold B. Gordon, President
Norbeck Meadows Civic Association
nmcaprexy@aol.com
301-570-0481

Sincerely,

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5/12/2006

Daniel, Debra

From: Troutner, Dave [Dave.Troutner@nasd.com]
Sent: Friday, May 12, 2006 12:01 PM
To: Daniel, Debra
Subject: FW: Protect Open Space In RNC Developments

fyi

From: Davetrountner@aol.com [mailto:Davetrountner@aol.com]
Sent: Thursday, February 23, 2006 11:59 AM
Subject: Protect Open Space In RNC Developments

Date: February 23, 2006
From: Dave Troutner
To: Neighbors and Friends

As you may be aware, there are several large properties in our area that will soon be developed under Rural Neighborhood Cluster (RNC) zoning whereby developers will build homes on small lots with sewer and water service on up to 40% of the property in exchange for a minimum of 60% of the property to be preserved as "Rural Open Space," which is defined by the RNC law as natural state land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space. A stated intent of RNC development is preservation of environmentally sensitive natural resources to the maximum extent possible. The theory of RNC zoning is that the open space land will preserve sensitive natural resources, such as the forests buffers and wetlands that we know as the top branches of Rock Creek.

The Upper Rock Creek Coalition, made up of more than a dozen civic organizations in the Upper Rock Creek Master Plan Area and effected communities, argued valiantly that large lot zoning has and would continue to preserve the environment with more assurance, and best maintain the existing semi-rural character of our community. But RNC is much more profitable for developers as it nearly doubles the numbers of homes they will build, and the Planning Board and the majority of the County Council changed the zoning in our Master Plan from RE-1 and RE-2 to RNC. To ensure the intent and integrity of the potential benefits from the RNC method, Community representatives are requesting amendment to the RNC to enforce the requirement that all RNC Rural Open Space, both private and publicly owned, is kept in its natural state "in perpetuity", meaning forever.

Now, there are a number of planned RNC developments in Montgomery County. As the most recent President of the Muncaster Area Civic Association, I have felt responsible for closely tracking two of them: The Reserve at Fair Hill (a development by Pulte on what was the Freeman Property on the south side of Route 108 between Laytonsville and Olney) and Bowie Mill Estates (an Oxbridge development on what was the Casey Property off of Bowie Mill Road and Muncaster Mill Road) and behind Sequoyah Elementary and Magruder High. They are both going through the Planning Board's final site plan process.

The Planning Board recently issued a final Opinion on The Reserve at Fair Hill site plan that takes the position that the language of the law (zoning text) does not require a written instrument (easement or covenant) on the publicly owned land that will assure the Rural Open Space is permanent. In other words, the County is attempting to take hundred of acres as "fee simple" and it will be legally possible for them to change its mind to trade it, sell it, or use it for other purposes in the future. The Planning Board's "loop hole" interpretation of the RNC law hinges on just one word in the multiple page law. Specifically, there is the word "or" where the word "and" should be in order for it to be consistent with the intention and all other written substance of that law.

5/12/2006

Without an easement or covenant on the land conveyed to the County as Rural Open Space, there is no guarantee that it will never be subdivided, traded, sold, or further developed for uses that are currently prohibited by RNC law or other unforeseen uses.

The present Planning Board and County Council cannot promise the intentions or actions of our future government.

What I am doing about this problem:

In early January, I requested that the Planning Board reconsider the Opinion in accordance with procedures. I asked that they amend the Opinion and site plan approval conditioned on written easements or covenants on all of the Rural Open Space, both public and privately owned, that set forth the restricted uses of the RNC Zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan, and prohibit any further development or subdivision within the rural open space area. The Bowie Mill Civic Association also sent an excellent written request for reconsideration.

I received a quick acknowledgement from the Planning Board's Office of the Chairman that they had received my request and a promise that I would be contacted by the staff. But after weeks passed by without a response from them, the next step of recourse had to be taken within 30 days of the Opinion.

On January 13, 2006, I filed a Petition for Judicial Review of the Opinion and final decision for Preliminary Plan 1-04110, The Reserve at Fair Hill, in the Circuit Court for Montgomery County. I am hoping that the Judge will remand the Opinion back to the Planning Board, forcing them to require written easements or covenants on publicly held Rural Open Space.

I have initiated playing "matchmaker" between the developers and non-profit organizations that are qualified and interested in the opportunity and responsibility of holding permanent conservation easements on the RNC dedicated public open space.

This message is not motivated by political aspirations, nor is it a politically partisan issue. Simply, it is a problem that citizens must stand up against, as the people did with the problems you read about in Clarksburg. Please join us in this effort to amend the RNC code as it is currently written to include easements and covenants on publicly held land. We must do this immediately to protect both large properties, the Preserve at Fair Hill and Bowie Mill Estates. See below on how you can support us.

What your County Council is attempting to do about this problem:

Councilmember Marilyn Praisner has filed a RNC Zoning Text Amendment (ZTA 06-04) that will clarify the inconsistent wording in the law by specifically requiring all publicly held land in the rural open space area of the RNC zone be preserved in perpetuity by application of easement or covenant that restricts the uses of the current law and provides and prohibits any development or subdivision within the rural open space area not expressly authorized. Her ZTA is scheduled to go before the Planning Board's Meeting on Thursday, March 2, 2006 between 9:00 am and noon. The Park & Planning staff is recommending "Denial."

The ZTA is scheduled to go before the County Council on Tuesday, March 7, 2006 at 1:30 pm. The County Council has the authority and can decide to clarify the language of the RNC law regardless of the Planning Board's reaction. It will require a majority vote. I will report back to you, for your information, which Councilmembers vote for or against this corrective legislation.

This problem is critical at the moment for the two properties in Upper Rock Creek that I previously mentioned. However, they also set precedent for a pipeline of numerous other properties to be developed under RNC zoning in Montgomery County.

What you can do:

Communicate to the Montgomery County Planning Board by email or letter:

mcp-chairman@mncppc-mc.org

Chairman Derek Berlage

Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

- (1) Ask the Planning Board to reconsider the Reserve at Fair Hill Site Plans (1-04110 and 8-05028) Opinions, and amend the approvals conditioned on written easements or covenants on all of the Rural Open Space, including the publicly owned acres that will legally prohibit any further uses, development or subdivision, in perpetuity, meaning forever.
- (2) Ask that they do the same for the Bowie Mill Estates Preliminary Plan 1-06032.
- (3) Ask that the Planning Board endorse RNC ZTA 06-04 and support clarification of the inconsistent wording in the law by explicitly and clearly requiring all publicly held land in the rural open space of the RNC zone be preserved in perpetuity by application of easement or covenant that restricts the uses of the current law and provides and prohibits any use, development or subdivision within the rural open space area not expressly authorized.
- (4) Attend the Planning Board's Meeting on Thursday, March 2, 2006 between 9:00 am and noon at 8787 Georgia Avenue, Silver Spring, MD. The public should be allowed to testify. You get a few minutes to give your two cents.

Communicate to the Montgomery County Council by email or letter:

councilmember.andrews@montgomerycountymd.gov
councilmember.denis@montgomerycountymd.gov
councilmember.floreen@montgomerycountymd.gov
councilmember.knapp@montgomerycountymd.gov
councilmember.leventhal@montgomerycountymd.gov
councilmember.perez@montgomerycountymd.gov
councilmember.praisner@montgomerycountymd.gov
councilmember.silverman@montgomerycountymd.gov
councilmember.subin@montgomerycountymd.gov

Council President, George Leventhal
The Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

- (1) Ask that they encourage the Planning Board to reconsider and amend the Reserve at Fair Hill Site Plans (1-04110 and 8-05028) Opinions to condition the approvals on written easements or covenants on all of the Rural Open Space, including publicly owned acres, which will legally prohibit any further uses, development or subdivision in perpetuity.
- (2) Ask that they adopt into law RNC ZTA 06-04 to support clarification of the inconsistent wording in the law by explicitly and clearly requiring all publicly held land in the rural open space of the RNC zone be preserved in perpetuity by application of easement or covenant that restricts the uses of the current law and provides and prohibits any uses, development or subdivision within the rural open space area not expressly authorized.
- (3) Attend the County Council's meeting on Tuesday, March 7, 2006 at 1:30 pm, 100 Maryland Avenue, Rockville, MD. The public should be allowed to testify. You get a few minutes to give your two cents if you sign up in advance to speak. Call Delphine Harriston at (240) 777-7931.

Support the Petition for Judicial Review:

Send me an email at davetroutner@aol.com stating that you support the Petition and believe that the Reserve at Fair Hill Site Plan (1-04110 and 8-05028) Opinions should be remanded to the Planning Board, who should revise them to condition the approval on written easements or covenants on all of the Rural Open Space, including the publicly owned acres, which will assure that any further uses, development or subdivision will be prohibited in perpetuity, meaning forever.

Thank you for taking the time.

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

March 2, 2006

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board on Zoning Ordinance Text Amendment No. 06-04

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission (“MNCPPC”) reviewed Zoning Ordinance Text Amendment No 06-04, at its regular meeting on March 2, 2006. By a vote of 4-1, the Planning Board recommends denial of the zoning text amendment (“ZTA”). The ZTA seeks to require all publicly held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant, and also changes the ability to create a subdivision for a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone.

The RNC zone already requires that land in the rural open space area that will be privately owned must be protected from inappropriate uses by recordation of an easement or covenant. The ZTA seeks to apply the same requirement to dedicated parkland. Title to dedicated parkland is held by either MNCPPC or Montgomery County Government. In either case, the parkland is managed by MNCPPC, and the Commission diligently protects that parkland from non-park uses. Dedicated parkland is public land and is owned and controlled by the duly elected or duly appointed representatives of the taxpayers. The ZTA seeks to constrain that public control by adding an easement or covenant prohibiting non-park uses. The ZTA does not specify the entity or individuals who would receive the legal power to enforce these easements. If the easement is intended to run to a public agency, its protection is superfluous, because the public already controls the land. If the easement is intended to run to a private party, such as a conservation or land trust, it represents a surrender of control over public land by the government, and gives a measure of control over that land to a private party. The Board believes that ceding public control over public land in this way is unwise. Land trusts, even if created for salutary purposes, are still private entities. Over time, such entities may experience leadership changes, contests over control,

financial or legal difficulties, and even dissolution. It is unwise to confer on such organizations perpetual control over public land.

The zoning text amendment also proposes to change the ability to create a subdivision for a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone. Current law allows a one-family detached dwelling in the rural open space under certain conditions. These dwellings must be located on "conservancy lots" of at least 10 acres. The ZTA would add a new requirement that conservancy lots must be recommended in the adopted master or sector plan. Conceptually, it is unclear what the conservancy lot amendment is trying to fix. It raises new problems such as: 1) what happens to existing master plans; 2) what happens to already approved developments; and 3) what criteria will be used to authorize these lots in future master plans. To date, there are no master plans or sector plans that designate specifically the conservancy lot exception in the rural open space area. From a design perspective, a minimum 10-acre conservancy lot is a good idea since it is a technique that is in line with the concept of providing flexibility in site planning of RNC developments. It assists in achieving a better plan more suited to the individual site conditions-- a major part of how the RNC is supposed to work--rural area, large development sites, visual impacts, etc. From a technical standpoint, 10-acre conservancy lots that are included in a site plan help achieve the lot size diversity requirement of the RNC zone. Therefore, the Board does not recommend limiting the use of conservancy lots in the manner proposed by the ZTA.

Commissioner Wellington dissented from the Board's recommendation of denial. She believes that parkland in the RNC zone should be subjected to easements limiting its future use notwithstanding its public ownership.

As stated above, the Planning Board recommends that Zoning Text Amendment 06-04 be denied.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Bryant and Robinson, Vice-Chair Perdue and Chairman Berlage voting in favor of the motion, and with Commissioner Wellington dissenting, at its regular meeting held in Silver Spring, Maryland on Thursday, March 2, 2006.



Derick P. Berlage
Chairman