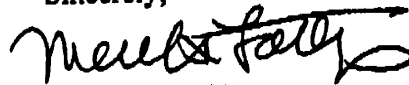


Planning Board to uphold the standard that has been set by denying development that is simply inappropriate and incompatible with the character of the prized Agricultural Reserve.

Thank you for the opportunity to comment on this important matter. The Potomac Conservancy is a regional conservation nonprofit dedicated to protecting the lands vital to the health, beauty and enjoyment of the Potomac River and its tributaries. If I can be of any assistance with respect to additional information about our strong interest in this particular region of Montgomery County or the sensitive ecological resources in this area, please do not hesitate to contact me at (301) 608-1188, ext. 204.

Sincerely,



Meredith Lathbury
Director of Land Protection,
General Counsel

18932 North Meadow Fence Road
Montgomery Village, MD 20886
December 8, 2004

Mr. David Fischer, Esq.

Dear David:

I have read your testimony and the planning department's staff report on the Stoney Springs preliminary plan of subdivision. I am in full agreement with the position you have taken in all of its particulars. I believe the staff have erred in recommending approval of this plan. The Board should reject it because it does not substantially conform to the Master Plan or the purpose of the RDT Zone.

As trustees for the future of the County, the Planning Board has a special obligation to insist on adherence to its master plans and a special obligation to protect the Agricultural Reserve, where so many land owners have transferred their development rights to receiving areas or land trusts and where public agencies and private individuals that have spent many millions of dollars to protect and sustain in perpetuity a critical mass of farmland. As a consequence of their work and investment, Montgomery County ranks at the top rank of all counties in the nation, and first in Maryland in its successful protection of farmland and a working rural landscape. It would be a serious breach of faith with those that have spent a generation working to protect the Reserve to now approve a plan that has no agricultural purpose or virtue. Rather it is an invitation to the annihilation of one of the county's and the State's greatest assets.

I regret that because of other commitments I cannot attend the hearing Thursday, but trust that you will convey my concern to the Board. My hope is that they will need little persuasion.

Sincerely,

Royce

Royce Hanson

the Olney Coalition

preserving the quality of life in Olney

December 9, 2004

Dear Chairman Berlage and Planning Board Commissioners,

Olney Coalition opposes the Stoney Spring development in the Agricultural Reserve southwest of Poolesville. Half of the Olney Master Plan is in the Agriculture Reserve and we are extremely concerned regarding the precedent this could set for additional residential development in Northern Olney.

While we support the development of innovative technologies, we oppose applying them in ways that were never intended. The alternative sand mound septic technology proposed for this development is a case in point.

The recommended water and sewerage guidelines that begin on page 59 of the Agricultural and Rural Open Space Master Plan states "Deny private use of alternate individual and community systems in all areas designated for the Rural Density Transfer Zone." The intent of the 1994 Council resolution regarding sand mounds was to allow farm families who wanted to build additional homes on their land for other family members or to replace their own failed septic systems. It was not an amendment to the master plan to allow for residential subdivisions.

Further, the General Refinement Plan states on page 33 that:

"The agricultural wedge is an invaluable resource for Montgomery County beyond its agricultural use. Maintaining large amounts of rural open space protects the environment – especially sensitive headwaters areas, conservation areas, wildlife habitats, and flood plains – from the impacts of development. It also serves as a "clean air shed" to cleanse the atmosphere, as well as the mechanism to protect the quantity and quality of water resources. "

Given the explosion in Montgomery County's population and air pollution problems, we need to preserve this area more than ever. If this development is approved, then it encourages other areas in the Agriculture Reserve to subdivide. This will erode the very reasons the Ag Reserve was created in the first place: to preserve farmland *and* to protect water and air quality for all residents in Montgomery County.

We ask you to hold true to the vision for the Agricultural Reserve and deny this application.

Sincerely,



Barbara Falcigno
President, Olney Coalition



**TESTIMONY OF MONTGOMERY COUNTY CIVIC FEDERATION
BEFORE THE PLANNING BOARD ON STONEY SPRINGS
PRELIMINARY PLAN REVIEW - December 9, 2004**

Good afternoon Chairman Berlage and Commissioners. My name is Jim Humphrey and I reside at 5104 Elm Street in Bethesda. I currently serve as the District One Vice President of the Montgomery County Civic Federation, and am pleased to have the opportunity to appear before you today in that capacity.

I am here today to question the wisdom of this Board approving a plan to subdivide a 700+ acre farm located southwest of the Town of Poolesville into 21 separate home sites. At our November 10, 2003 meeting, Civic Federation delegates adopted a Balanced Land Use Policy by an overwhelming majority vote of the members present. The policy contains 3 simple points:

- 1) Improve balance between jobs and housing within the regions of the county.
- 2) Organize growth around transit nodes, both rail and bus, while insuring adequate infrastructure and county services are in place to accommodate such growth.
- 3) Reduce growth in rural and outer low-density suburban areas.

I realize that at first glance this may seem an overly simplified approach to good land use planning. However, all 3 of these policy points relate to the Stoney Springs preliminary plan you now have before you.

As to policy point #1, an imbalance exists between jobs and housing with the majority of low- to moderate-income housing being located on the eastern side of the downcounty (in Langley Park, Takoma Park and east Silver Spring) while a majority of job opportunities for the residents of such housing exist on the western side of the downcounty (in Bethesda, Friendship Heights and Potomac). The subdivision plan before you, calling for the building of luxury homes on minimum 25 acre lots on the western side of the downcounty, will do nothing to help rectify this imbalance.

The second point in the MCCF Balanced Land Use Policy urges that "smart growth" development be focused near transit nodes, with the added proviso that we should insure adequate roads, schools and county services are in place to accommodate such growth. I believe that Chairman Berlage has made statements noting his desire to

protect the county's Agricultural Reserve, a nationally recognized environmental asset, in part by focusing new development in "smart growth" transit center areas. The Stoney Springs plan to subdivide a 700 acre farm into home sites is the very kind of suburban sprawl that members of this Board and the County Council claim they are trying to prevent by encouraging increased residential density in transit center areas.

Next week, this Board will be considering approval of the Woodmont Triangle Amendment, to increase residential density in the Central Business District of Bethesda. If you are to ask residents of Bethesda to accept increased density as a trade off for preventing suburban sprawl in the more rural areas of the county, then you must hold up your end of that bargain and act to prevent the continued chopping up of rural and agricultural areas into suburban subdivisions, no matter how large the proposed lot size. That is the essence of the third point in the Civic Federation's Balanced Land Use Policy that urges the reduction of growth in rural areas like this pristine farmland southwest of Poolesville.

I would also like to raise a concern about the sand mound septic technology proposed for use in this Winchester Homes subdivision plan. The Preservation of Agriculture and Rural Open Space Functional Master Plan recognizes that the land in the Agricultural Reserve, with the high clay content of its soil, does not meet conventional septic standards. The Plan specifically recommends denying "private use of *alternative individual* and community systems in all areas designated Rural Density Transfer (RDT)." Sand mound septic technology is still relatively new, but anecdotal evidence gathered on its use indicates system failures can result in ponding in the absorption area of the mound, and seepage out of the side or toe of the mound. This type of system failure could impact nearby streams or the underground aquifer from which residents draw their water, endangering the health and safety of the area's human population and wildlife. Another disadvantage is the negative aesthetic impact it would have on an area of the county in which we should be attempting to maintain scenic agricultural vistas.

A County Council resolution that was introduced by then-District 2 Councilmember Nancy Dacek, agreed to in 1994 I believe, suggested approving use of alternative septic technology in cases where traditional septic had failed and it was found necessary to allow the alternative in order to permit a farm family to continue to live on and work their land. The Council also urged that alternative technology be allowed in cases where a farm family needed to build a new dwelling to house family members who wished to join in operating a farm. The Council resolution did not constitute an amendment to the Functional Master Plan, nor did it seek to allow alternative septic technology as a means of approving new subdivision development in the AgReserve.

By approving this preliminary plan you would be permanently taking this land out of agricultural use, which is counter to the objectives in the Agriculture and Rural Open

Space Functional Master Plan. One of the primary goals for establishment of the AgReserve was to help assure a viable farm industry in Montgomery County, a goal that will be difficult to meet by approving the subdividing of farms into homes sites. I understand that this property is on the list of those being considered for inclusion in the county's Legacy Open Space Program, which means you already realize its value as an environmental asset that should be preserved for ours and future generations. I urge you to find a way to make that happen. And, I and others in the Montgomery County Civic Federation stand ready to assist you in the effort, should you desire our assistance. Thank you.



A Citizens' Alliance for Responsible Transportation

4000 Albemarle Street, NW, Ste. 310
Washington, D.C. 20016

202-244-4408 | Fax 202-244-4438

www.solutionsnotsprawl.org

Chairman Derick Berlage
8787 Georgia Avenue
Silver Spring, MD 20910

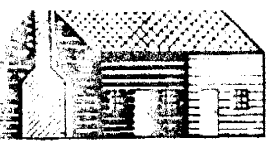
December 9, 2004

RE: Opposing the Stoney Spring development proposal in Poolesville

I am a member of Solutions Not Sprawl, a grassroots alliance of individuals and civic and environmental organizations across the metropolitan region. Thank you for the opportunity to testify today. We urge you to oppose the Stoney Spring proposal near Poolesville. This proposal would destroy over 700 acres of open, natural land and violate the integrity of the County's Master Plan.

This development proposal proves that open space and agricultural land are being threatened in our county and in our region. This Planning Board and your predecessors have worked hard to protect the Agricultural Reserve from development and this proposal would have irreversibly detrimental effects on the very character of the Reserve. Paving land and building palatial homes on what the County's Legacy Open Space list calls "the last of the best places in the County" would destroy beautiful open space. This increase of impervious surface has a harmful effect on water quality and wildlife habitat, in addition to significantly altering the landscape and increasing traffic on local and rustic roads. This area maintains its rural character because of the way it is zoned, and neighbors of the Stoney Spring site do not want these changes. Do not give in to the pressure of developers and allow an increase of development in an area that should be considered off-limits.

Residents and officials are rightfully proud of the Master Plan process in Montgomery County. Stoney Spring violates the integrity of the Master Plan and the process in which so many people invested time and careful forethought. The sand mound systems being used for this proposal are a form of alternative individual septic technology, against which the Plan strongly advises because they encourage development in active farmland. The sand mounds for the Stoney Spring development are not compliant with the Master Plan and should not be allowed in the Reserve for houses which are so clearly intended for non-agricultural use. The Master Plan is also meant to prevent the fragmentation of farmland by development and allows residential options *only* when they are consistent with preservation. Stoney Spring complies with neither of these. Again, as "the last of the best places in the County", this parcel would be fragmented by 21 houses with no intent of land preservation. This area is not intended to be suburban, but rural. **We do not want to see the suburbanization of the Agricultural Reserve.**



Testimony before the Montgomery County Planning Board

December 9, 2004

Item 7 – Stoney Springs (Casey Property) Preliminary Plan for Subdivision.

My name is Perry Kapsch. I reside at 18200 Beallsville Road, Poolesville, MD. I am here to represent the Historic Medley District, Inc. Board of Directors. HMD's offices are located at 19923 Fisher Avenue, Poolesville, MD, in the heart of Montgomery County's Agricultural Reserve.

We ask that the Planning Board deny the preliminary plan for the following reasons:

1. The development as it is currently planned is not in compliance with the Ag Reserve Master Plan.

a. Staff indicates that MCDPS has reviewed and approved the proposed sand mounds. Once again, Department of Permitting Services is ignoring the laws in the Montgomery County Code that were put in place to support the Ag Reserve Master Plan. There have been a number of notorious instances in the last few months of the MCDPS wrongly issuing permits for activities in the Ag Reserve in direct contravention of the Master Plan and its supporting legislation. These include a diversity of incompetence including, among others, failure to follow correct procedure that led to the demolition of a historic building, failure to follow correct procedure that led to installation of illegal commercial radio towers, failure to obtain a special exception for soccer tournaments on horse farms and approval of alternative septic methods for non-farm construction. As discussed by those more expert than HMD in the law, the executive order to allow sand mounds was not passed in order to convert historic farmland to elitist housing developments. DPS seems to think that all of Montgomery County is a giant housing development, either in place, or waiting to happen.

b. The Planning Board staff spent a lot of effort to tweak the proposed plan, but has failed to make any serious effort to protect the Ag Reserve. Like DPS, they seem to have housing developments on the brain. The staff's job is to implement master plans and then to see that the projects that come to the planning board for approval comply with the plans. They have failed to do so in this case, and in others in the Ag Reserve such as allowing landowners to misrepresent their qualifications for kiddy lots. The executive order on sand mounds was passed in order to assure that farmers could continue to live on their farms without endangerment to their health. Staff had a responsibility to be sure that the order was in compliance with the language and the purpose of the master plan. Monster mansions are clearly not in compliance with the master plan. I know from long experience how important it is for the Planning Board to rely on the competence of the staff. For the staff to hide behind the 25 acre zoning rather than confront the

real issues that the proposed project raises as to land use and water quality fails to serve well either the Planning Board or the public whom the board represents. We trust you with our county. Based on the staff report, our trust is seriously misplaced.

2. The landowner has a financial interest in destroying the Ag Reserve. With the many acres of land that she owns, it is in her best interest to see all the county's open spaces converted to housing for the wealthy, regardless of the negative impact this will have on the people of the county. It should be noted that denial of the plan will not deprive the landowner reasonable use of her land. She and her foundation have a number of alternative means of realizing a maximum return on the original investment beyond just the sale of TDR's

a. Legacy Open Space has placed the property on its list of potential acquisitions. It could be bought, an easement put on it and then resold with most or all of the development rights extinguished. This would assure that the water quality of the area was not compromised by multiple septic systems and would keep the open space, forests and farmland that are the important features of this property.

b. Conservation-minded purchasers have been found for similar properties in the Ag Reserve. It is reasonable to expect that they would come forward to protect this land as well.

Approval, even with the staff's conditions, of this project sends the Ag Reserve, not down a slippery slope, but crashing over a cliff. How can this plan be approved and similar developments be denied? It is vital that the quality of life of the people of the county be placed ahead of the financial interests of the housing industry. When the home builders have built on every square inch of the county, they will not stay around to suffer the results of their work. They will move on to find new land in other counties that they can convert to housing. The people of our county will have lost their legacy, they will be left without farmland, without country roads, with tiny token forest patches, with overcrowded parks and without historic open spaces.

It is important that the Planning Board convey the message that the Ag Reserve is already entirely developed, not as housing, but as historic farmland and open spaces. There is no room in the Ag Reserve for clustered housing developments or posh suburban mansions. Let Winchester Homes come back with a project that is comprised of 25 acre farms, priced so they are viable as farms. With the help of existing conservation programs, this is possible. If the Planning Board stands behind its master plan, this can happen. Please deny this preliminary plan.

WEST MONTGOMERY COUNTY
CITIZENS ASSOCIATION

FOUNDED 1947

P.O. BOX 59335 • POTOMAC, MARYLAND 20859-9335

Re: Testimony on 'Stony Springs' Preliminary Plan - MNCPPC - 12/9/2004
By: Ginny Barnes, Environmental Chair

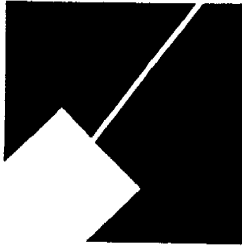
The Potomac Subregion is one of two residential "Green Wedges" intended to buffer and create a transition to the agricultural open space we all value so highly. We take a keen interest in the protection of this precious resource because our destiny is linked to it and we share so many of the same problems and threats. Our recent Master Plan process wrestled with the dangers of expanding the sewer envelope to the detriment of the environmental premises on which our zoning depends. The key to the plan before you today is **preservation**. Does the plan meet the requirements of *The Master Plan Of Agriculture and Rural Open Space*? We believe it does not. The use of sand mounds encourages development within the critical mass of active farmland in direct contravention of the Master Plan. Furthermore, the Master Plan calls for the denial of "private use of alternative, individual and community systems in all areas designated for the Rural Density transfer zone." This Preliminary Plan is inconsistent with the MP objective of preventing fragmentation of active farmland. Farming is recognized as a **permanent** use and "not simply a holding land use to be utilized for future development."

The simple fact that sand mounds may be an acceptable alternative to traditional septic systems does not mean that they should override the guidance of the Master Plan. We would ask that the Planning Board defend it's Master Plan in this case and deny this Preliminary Plan. Further, the PB needs to take a proactive role in the preservation of our agricultural open space. If a proposed plan does not further the goal of preservation of rural open space, then it should be emphatically denied.

Thank you for the opportunity to comment.

Ginny Barnes, Environmental Chair
10311 Glen Road
Potomac, Md. 2085
(301) 762-6423

M-NCPPC



MONTGOMERY COUNTY DEL

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

ATTACHMENT THREE

Date Mailed: DEC 20 2005

Action: Approved Staff
Recommendation.

Date of Hearing: March 17, 2005.

Motion of Commissioner Robinson,
Seconded by Commissioner Bryant,
with a vote of 3-2.

Commissioners Robinson, Bryant and
Perdue voting in favor. Chairman
Berlage and Commissioner Wellington
voting against.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05029

NAME OF PLAN: Stoney Springs (Casey Property)

The date of this written opinion is DEC 20 2005, 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Procedure).

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

I. INTRODUCTION

On August 14, 2004, Winchester Homes (the "Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the Rural Density Transfer ("RDT") Zone. The application proposed to create 13 lots as well as 8 outlots and unrecorded areas for future lots on approximately 704 acres of land located

at the south side of West Offutt Road and the west side of Mount Nebo Road at the intersection of West Offutt Road and Mount Nebo Road in Poolesville (the "Property" or the "Subject Property").¹ The Property is located within the boundaries of the Functional Master Plan for the Preservation of Agriculture and Rural Open Space ("Agricultural Master Plan" or "Master Plan"). The application was designated Preliminary Plan 1-05029 ("Plan").

On December 9, 2004 and March 17, 2005, Preliminary Plan 1-05029 was brought before the Montgomery County Planning Board ("Planning Board" or "Board") for public hearings. At the public hearings, the Planning Board heard testimony and received evidence submitted in the record on the application ("Record").

The Record closed at the conclusion of the March 17, 2005 public hearing, after action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its Staff following submission of the application and prior to the Board's action at the conclusion of the public hearings; all correspondence and any other written or graphic information concerning the application received from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board Staff concerning the application prior to the Board's action following the public hearings; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearings.²

II. THE SUBJECT PROPERTY AND SURROUNDING AREA

The Subject Property includes an existing farmhouse and outbuildings. The Property is currently fallow fields but has been actively farmed in the past. The Property includes streams, wetlands, floodplains, and 304 acres of forest. Edwards Ferry Road that adjoins a portion of the easternmost boundary of the Property is designated as "exceptional and rustic" in the approved and adopted Functional Master Plan of Rustic Roads ("Rustic Roads Master Plan"). West Offutt and Mount Nebo Roads that both border and bisect portions of the Property are designated "rustic" in the same Master Plan. The surrounding properties contain agricultural uses or forest with the exception of a cluster of residential lots abutting the Property on the west side of Edwards Ferry Road. A conservation property owned by the Izaak Walton League abuts the southeast

¹ As discussed below, the application was later amended to reduce the entire potential development to 14 lots and one outlot, with no other areas reserved for future development.

² The March 17, 2005 hearing was a continuation of the December 9, 2004 hearing, and the Record encompasses both hearings.

corner of the Property; a shooting range and related club facilities are currently operated on the Izaak Walton League property. The Property also contains a log cabin designated on the Locational Atlas as a historic resource.

III. PROPOSED DEVELOPMENT

The current Plan proposes fourteen (14) lots and one (1) outlot on the Property. The Applicant proposes to remove all remaining transferable development rights ("TDRs") from the Property thereby creating no additional lots in the future.³ The overall density on the Property will be one dwelling per 50 acres, or one dwelling per 47 acres if the outlot is ever converted to a building lot. A 25-foot public use trail easement will be located on the Property.

The current preliminary plan is a revision to an earlier preliminary plan ("Prior Plan") on the Property that was considered by the Planning Board at a public hearing on December 9, 2004. The Prior Plan was submitted after Staff comments were received on a pre-preliminary plan application (No. 7-03023) filed in January, 2003 for Staff review and septic testing purposes. The pre-preliminary plan proposed 28 potential residential lots on the Property. After Staff comments were received on the pre-preliminary plan, the Applicant filed the Prior Plan on August, 2004 for 13 lots, 8 outlots and unrecorded areas for additional lots. All the lots then proposed were to be served by private sand mound septic systems⁴ and wells. The Staff recommended approval of the Prior Plan, with conditions. At the December 9, 2004 public hearing on the Prior Plan, issues were raised regarding the use of sand mound septic systems, the size of the proposed lots, and the density proposed for the Property. Following comments by the Planning Board regarding the Prior Plan, the Applicant requested that the action be deferred, in order to respond to the issues raised at the public hearing. The Prior Plan was substantially revised to address the Planning Board's concerns, and the Applicant submitted a revised plan that significantly reduces the density proposed in the Prior Plan.

The amended plan ("Revised Plan") includes 14 lots and 1 outlot that could be converted through the minor subdivision process to a buildable lot. These 14 lots and 1 outlot range in size from 3.5 acres to 309.1 acres. Nine of the potential fifteen lots are greater than 20 acres, and eight out of nine of these lots are greater than 30 acres. The other six lots proposed for the Subject Property range between 3.5 and 8 acres in size. The proposed lot layout consists of two areas where the smaller lots are clustered in groups of four, with the remaining land consisting of dispersed larger lots. The first cluster of four lots is located in the southwest portion of the Property at the end of a long

³ The Applicant will serialize and convey the TDRs from the Property subsequent to the recordation of the plat.

⁴ Sand mound septic systems are discussed in detail in Section V. of this Opinion.

driveway. Existing forest and tree cover provide visual buffering between houses on these lots and the road frontages. The second lot cluster of four lots is located on the east side of Mount Nebo Road at the end of a shared driveway that rises in elevation from the road. The clustering of these smaller lots allows large areas of generally contiguous property suitable for agricultural and related uses.⁵

IV. SUMMARY OF TESTIMONY

At the hearing, witnesses testified in support of and in opposition to the proposed preliminary plan. The witnesses focused on two main issues: (1) whether the use of sand mound septic systems are proper in the Agricultural Reserve; and (2) whether the lot sizes and density of the proposed development meet the standards and objectives of the RDT Zone and the Agricultural Master Plan.

A. Staff Testimony

Development Review Staff testified that the Revised Plan proposed 14 lots and 1 outlot on the Property.⁶ Staff noted that the Property is designated as an “exceptional property” under the Legacy Open Space Program. Staff also informed the Planning Board that the 14 lots had obtained approval from appropriate County agencies for development with sand mound septic systems. Staff further testified that the proposed lots included: 6 lots between 3.5 and 8 acres in size, 1 lot of 20.6 acres, 7 lots between 30 and 78 acres in size, and an outlot of 309 acres. Staff also noted that the Applicant has agreed to sever all remaining TDRs from the Property if the Planning Board approved the application, thus precluding any future development of the Property.

Staff calculated the overall density of the proposed development to be one unit per 47 acres (compared with the one unit per 25 acres permitted under its RDT zoning) and noted that, in Staff’s opinion, this plan preserved farmland by significantly reducing the number of proposed lots and by significantly increasing the proposed lot sizes from the Prior Plan. In particular, Staff noted that the proposed lot layout locates the smaller lots in a manner that preserves large contiguous farm fields, and that this layout better protects large contiguous segments of the agricultural soils on the Property.

In further describing the proposed plan to the Board, Staff identified two clusters of smaller lots within the 704-acre site and stated its conclusion that clustering the

⁵ This is discussed more fully in Section V below.

⁶ Staff summarized the issues raised by the Board in the First Hearing as concern over the use of sand mounds to achieve full density on a property that does not support the use of septic fields, and the fragmentation or loss of existing farmland because of size and location of lots within Prior Plan.

smaller lots would preserve large contiguous areas of agricultural land. Staff summarized the proposal by describing the plan as: (1) preserving 353 acres of the currently existing 395 acres of farm fields; (2) retaining 662 of the 704 acres, including 300 acres of forest, as agriculture or agricultural open space; and (3) meeting all the applicable requirements for forest conservation, including protection of the highest quality forest and environmental buffers and wetlands on site. Staff advised the Board that in its opinion residential uses are permitted uses in the RDT Zone provided that the proposed plan maximizes and prioritizes agriculture in accordance with the Agricultural Master Plan. Staff stated that the plan did a "significantly better job" than the earlier plan of protecting agricultural lands. Staff testified that the Agricultural Master Plan language regarding alternative individual septic systems⁷ has not been interpreted as prohibiting the use of sand mound septic systems in the RDT Zone. The Staff Report identifies a total of 35 lots in the RDT Zone that have received approval for sand mound septic systems since 1999. In conclusion, Staff recommended that the Planning Board approve the preliminary plan with the conditions proposed by the Staff because the plan met all the applicable requirements of the subdivision regulations and was in compliance with the RDT Zone and the Agricultural Master Plan.

In response to Boardmember questioning, staff testified that the property had been nominated for and subsequently was added to the Legacy Open Space Functional Master Plan as a Farmland and Rural Open Space (Class II). The property had been identified as an exceptional property in the Agricultural Reserve due to the high quality of the forested wetlands on the property, the ecological connectivity that those forests provide between significant natural areas, and the large size of the agricultural fields. An additional factors supporting the exceptional site status are the rustic roads and associated rural vistas. The Legacy designation had recommended the use of easements as the preferred protection technique for this Property. Staff also testified that the recommended standard for *acquisition* of easements, were the County to purchase easements to reduce development density on the site would be to achieve a maximum density of one unit per 50 acres.

⁷ The Agricultural Master Plan at page 62 provides in pertinent part:

Recommended Water and Sewerage Guidelines

- Deny private use of alternative individual and community systems in all areas designated for the Rural Density Transfer Zone (RDT)
- Study the possible application of private alternative individual and community systems in rural open space areas (*Emphasis in original*)

B. Applicant's Testimony

Sylke Knuppel, Development Manager for the Applicant Winchester Homes, testified that the proposed plan was a revision to the earlier plan and that it incorporated Planning Board comments and suggestions that encouraged the Applicant to reduce the number of lots proposed for the Property and to create larger agricultural parcels. She reminded the Board that during its consideration of the earlier plan the Board had concluded: (1) that sand mound septic systems would be appropriate on the Property; and (2) that use of sand mound systems did not conflict with the Agricultural Master Plan or County regulations. She described the current preliminary plan as reflecting the Board's suggested revisions and noted that the current plan provided for a density of only one-half of the density allowed in the RDT Zone.

Robert Harris, legal counsel for the Applicant, submitted into the record copies of State regulations,⁸ a County resolution,⁹ and County regulations and reports,¹⁰ that all confirm that under County policy, sand mound septic systems are not considered "alternative or innovative septic systems" and are expressly allowed in the Agricultural Reserve. He stated that the County regulations were adopted specifically to afford landowners in the RDT Zone a reasonable opportunity to develop their properties in the RDT Zone at the zoned density.¹¹ He explained that the County Resolution, and the related Executive Regulations, were adopted in response to farmers' concerns that there was no clear County policy on the use of sand mound septic systems in the RDT Zone.¹² The adoption of the County policy on the use of sand mound septic systems was to make clear that such septic systems are acceptable in the RDT Zone and the use is not in conflict with the Agricultural Master Plan. Mr. Harris noted that the County has for many years approved sand mound septic systems to support development of

⁸ COMAR 26.04.02 ("State Regulation").

⁹ Resolution No. 12-1503, adopted by the County Council on February 22, 1994, approving Executive Regulation 28-93AM, is entitled "On-Site Water and On-Site Sewage Disposal Systems" ("County Resolution").

¹⁰ The County Regulations and Reports include (as an attachment to Resolution No. 12-1503) the Health Department Policy on Mound Systems ("Health Department Policy"), the Executive Regulations (28-93AM) titled "On-Site Water and On-Site Sewage Disposal Systems in Montgomery County", and other correspondence and materials providing background for the adoption of the Resolution 12-1503 and Executive Regulations No. 28-93AM.

¹¹ Resolution No. 12-1503, ¶ 2.

¹² *Id.*; Health Department Policy, ¶ 1.

properties in the RDT Zone. He further noted that the Board recently approved proposed developments in the RDT Zone that employed those systems.

With specific reference to the proposed preliminary plan, Mr. Harris testified that the Department of Permitting Services, the County agency authorized to approve such plans, has approved the use of sand mounds on the Property. He emphasized that the Planning Board during its consideration of the earlier preliminary plan had encouraged the Applicant to revise the plan to better preserve agricultural and rural open space. He stressed that the revised preliminary plan accomplished that goal. He further testified that: (1) the Agricultural Master Plan and the RDT Zone both allow a density of 1 unit per 25 acres; (2) the RDT Zone allows lots as small as 40,000 square feet; and (3) neither the Agricultural Master Plan or the Zoning Ordinance restrict properties zoned RDT to only agricultural uses. Rather, the Plan specifically allows "a variety of land uses," including residential uses. He stated that the RDT Zone allows up to 28 single-family lots on the Property (a density of 1 unit per 25 acres). He stressed that the Applicant, after careful consideration of the Planning Board comments on the earlier plan, had reduced the number of proposed lots to 15 (a density of 1 unit per 47 acres). In conclusion, Mr. Harris summarized the benefits of the Revised Plan as (1) limiting development on the Subject Property to approximately one-half the allowable density; (2) retaining 90% of the farm parcels;¹³ and (3) preserving 300 acres of forest, protected in perpetuity at no cost to the County, under the provisions of the Forest Conservation Law and as recommended by the Legacy Open Space master plan; (4) creating three miles of equestrian trails

In rebuttal, Mr. Harris argued that the Resolution and amended Regulations reflect precisely the policy referenced in the Agricultural Master Plan.¹⁴ He further testified that ninety percent of the farmland on the property is being preserved either in the large parcel, or within lots of 25 acres or greater, which the Agricultural Master Plan establishes as a lot size that will encourage the preservation of agricultural uses. Mr. Harris concluded by noting that this site strikes a balance between the private property rights of the property owner, and the public policy goals of the preservation of agricultural uses, open space, and existing forest.

The Board asked the Applicant what assurances it had to offer to assure that the property would be used in agricultural uses. The Applicant testified that it intends to market the units as "farmette" lots, and has agreed to provide an equestrian trail system through the project, that links with adjoining equestrian trails, and expects that many purchasers will buy their properties for that use, and that it expects the 300-acre parcel will be sold as a farm. The Applicant also confirmed that it will file with the Commission a declaration of intent, required under the Forest Conservation Law, that it intends that

¹³ 353 of the 395 acres currently in agricultural use will be preserved for agricultural use through the lot layout in the Revised Plan.

¹⁴ Agricultural Master Plan p. 17.

the property would be farmed for a period of five years. The Applicant also confirmed that it was going to transfer all of the Transferable Development Rights (TDRs) off of the site, which will ensure that there will be no additional development on the site.

The Applicant, again in response to Board questioning, stated that the intent of the RDT zone is not to guarantee only 100, 200 or 300-acre farms. The Applicant stated that instead that the Agricultural Master Plan contemplated a combination of large farms, and smaller farm properties.

C. Citizen Testimony

Several witnesses testified in opposition to the proposed plan, including Royce Hanson, former Planning Board Chairman, and Dick Tustian, former Director of M-NCPPC's Department of Park and Planning. Royce Hanson framed the issue before the Planning Board as "whether the Board could find that the proposed subdivision, which uses sand mound septic technology, substantially conforms to the Master Plan". Mr. Hanson testified that the Board should find that the Revised Plan does not conform with the Agricultural Master Plan. Mr. Hanson referenced the Agricultural Master Plan language that disallows "alternative systems." Mr. Hanson opined that sand mound septic systems would have been considered "alternative systems" in 1980 at the time the Master Plan was adopted, and testified that the Board should interpret this language to prohibit the use of sand mound septic systems in the Agricultural Reserve in 2005, because in 1980 sand mounds were "alternative systems," and would not have been allowed, and would have resulted in lower densities than can be achieved through use of those systems.

Mr. Hanson further stated that because the Board should not rely on densities achieved through the use of sand mounds, and that use of sand mounds is contrary to the Agricultural Master Plan, the Board should deny the Revised Plan under Section 50-35(l) of the Montgomery County Subdivision Regulations ("Code") for non-conformance with the Master Plan. Mr. Hanson said that the Revised Plan is inconsistent with the Agricultural Master Plan's objective of sustaining a critical mass of farmland, by limiting its fragmentation, recognizing farmland as a permanent use. Mr. Hanson acknowledged that residential uses are allowed by the Plan, but cited to the Master Plan in support of his position that limited residential and commercial uses are allowed to serve the agricultural community, and are allowed only on a limited basis and consistent with the overarching goal of the preservation of agricultural uses.

Finally, Mr. Hanson testified that the Board should not rely on the County's Resolution and Regulations removing sand mounds from the definition of "alternative systems," asserting that to do so would be a *de facto* transfer of master planning authority from the Planning Board to DPS.

David Fisher, legal counsel to the conservation group For A Rural Montgomery ("FARM") testified on behalf of FARM that it believed the preliminary plan did not

substantially conform to the Agricultural Master Plan. He stated FARM's position that sand mounds should be used in the RDT Zone only for failing septic systems or where necessary to support family farms and agricultural activities. Mr. Fisher testified that septic systems should be used as a tool to limit density on properties governed by the Agricultural Master Plan. Like Mr. Tustian, he testified that the County Regulations and Resolutions that redefine sand mounds to remove them from an "alternative system" definition do not constitute an amendment to the Agricultural Master Plan. He further argued that the Board should apply the recommendations of the Agricultural Master Plan as they would have been interpreted and applied in 1980, notwithstanding the reclassification of the status of sand mounds. Additionally, Mr. Fisher stated that the Board should not rely on prior approval of sand mounds as persuasive in granting approval of the Revised Plan, particularly since this plan relies entirely on sand mounds to support its density.

Mr. Fisher also testified that "smaller, clustered lots" are not sanctioned under the Agricultural Master Plan. He stated that notwithstanding the RDT zone's authorization of lots as small as 40,000 square feet, they should not be allowed because they do not protect or promote agricultural uses, and foster the fragmentation of property in agricultural use. In essence, Mr. Fisher testified that any lots that do not contain agricultural uses should be denied. He also took issue with staff's testimony that these smaller lots are located on non-prime agricultural soils.

Finally, Mr. Fisher testified that the Revised Plan did not comply with the Rustic Roads Master Plan because 5 of the clustered lots would be visible from Mount Nebo Road and would "destroy the scenic vista". He requested that the Planning Board deny the Revised Plan.

Richard Tustian, former Planning Director between 1969 and 1990, testified against the Revised Plan. Mr. Tustian testified that, in his opinion, the primary intent of the Agricultural Master Plan and the RDT Zone was to limit use of land within the planning area to open space and the preservation of farmland. He testified that the Agricultural Master Plan is written to allow residential uses in the Agricultural Reserve "only to the extent that they were necessary to support agriculture." He conceded the RDT Zone allows lots as small as 40,000 square feet but argued that the RDT Zone does not mention "clustering." He emphasized that to preserve agricultural uses requires the preservation of large contiguous areas of open space. He said that the Agricultural Master Plan created three general types of uses: (1) agricultural reserve; (2) rural open space; and (3) rural residential, but only as needed to serve agricultural uses. He testified that the intent of the RDT zone was to exclude all residential uses not needed to support agricultural uses.

In support of this position, Mr. Tustian noted the absence of any reference in the RDT zone to the "clustering" of residential lots. He said that the allowance of a 40,000 lot size was intended solely to allow the construction of residential units to support farming needs. He also testified that the creation of these lots would make it more

difficult actually to farm the lots that have been created for agricultural uses (*i.e.*, those lots 25 acres and larger).

In response to Planning Board questioning, Mr. Tustian testified that a landowner is not entitled to full density on property, just by virtue of the fact that the Zoning Ordinance provides a maximum density. He said that the intent of the Agricultural Master Plan was to limit residential density within the RDT zone, by authorizing only the use of septic fields to support residential development, and that use of sand mounds (or other non-septic technologies) are precluded.

Ginny Barnes testified on behalf of the West Montgomery County Citizens' Association and the Montgomery County group of the Sierra Club. She testified that the sole issue is the use of sand mounds in the critical mass of active farmland. She concurred with Mr. Hansen's testimony that deferral to DPS' definition of "alternative systems" effectively cedes the role of master plan interpretation to DPS. Additionally, she stated that it was known that these properties would not generally "perc" for septic system use, and thus at the time the Agricultural Master Plan was approved it was presumed that reliance of percolation tests would limit densities in the RDT zone.

Nancy Wendt testified on behalf of the Olney Coalition. While acknowledging that the Revised Plan was an improvement over the Prior Plan, she raised three concerns about the Plan. First, she testified that the plan should be denied because it relies on sand mound technology, which she testified is not authorized under the Agricultural Master Plan. She referenced the testimony of December 9 from former County Councilmember Nancy Dacek, which stated that sand mounds were allowed in the RDT zone solely to replace failing systems and to serve agricultural uses, in support of her testimony.

Theresa Cummings, Director of Poplar Springs Animal Sanctuary located on a 430-acre farm on Mount Nebo Road, testified in opposition to the Revised Plan. She testified that five of the proposed houses, along with one of the driveways serving those houses, will destroy the scenic vista along Mount Nebo Road. Sheila Cochran, 50-year owner of the farm, submitted a letter into the record opposing the Revised Plan, encouraging the Board to preserve open green space.

Larry Shaudes[?], owner of an adjoining farm, testified that the best land in the geographical area testified that the best land to farm is located where the homes are clustered, and testified in opposition to the Revised Plan.

Subsequent witnesses, including representatives from Solutions Not Sprawl, Historic Medley District, Inc., Peachtree Ridge Civic Association, the Clarksburg Initiative Association, Izaak Walton League (Bethesda-Chevy Chase Chapter), Montgomery County Civic Federation, Montgomery Preservation, Inc., the Audobon Naturalist Society presented cumulative testimony that echoed the objections to the

Revised Plan raised by the first speakers. The record also contains written testimony from other individuals and organizations in opposition to the Revised Plan.

V. PRELIMINARY PLAN

A. ANALYSIS

1. The Subdivision Criteria

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision Regulations. The application should also meet the requirements of the Zoning Ordinance applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape, and orientation must be appropriate for the location of the subdivision and for the type of use contemplated. Lots also should abut a dedicated street or public road.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary plans of subdivision. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into conformance with the Montgomery County Code and all other applicable regulations. The Planning Board's approval procedure for preliminary plans includes review pursuant to Section 50-35(k) of the subdivision Regulations ("Adequate Public Facilities Ordinance" or "APFO"), which directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities, including the transportation system, will be adequate to serve the proposed subdivision; Section 50-35(l), which requires a finding that the preliminary plan substantially conforms to the Master Plan, unless events have occurred to render the relevant master plan recommendation no longer appropriate; and Section 50-35(o), which mandates that the Board ensure that all requirements of the forest conservation law are satisfied before approving a plan.

B. Board Deliberations

1. Lot Size, Shape, Width, and Depth

The record for the Application includes contested evidence on the issues of whether the lot sizes, width, shape, depth and orientation of the subdivision are appropriate for the location of the subdivision and for the proposed uses.

The Applicant proposes lots ranging in size from 3.5 acres to 309.1 acres. Some witnesses testified that they believed lots smaller than 25 acres should not be allowed in

the RDT Zone and/or that the smaller lots proposed on the Property should not be “clustered”. Some witnesses also testified that residential uses should not be allowed in the Agricultural Reserve unless those uses were to support agricultural uses.

The Board notes that the Agricultural Master Plan and the RDT Zone both allow developments with lots as small as 40,000 square feet. The Board further notes that the Agricultural Master Plan and the RDT Zone both allow residential uses as a matter of right in the Agricultural Reserve even if those residential uses are not used in conjunction with or to support traditional agricultural uses. In addition, the Board notes that the Applicant’s proposal to group smaller lots in two areas on the Property results in significantly larger contiguous parcels of agricultural land than had been proposed in the original Plan layout, and the majority of Boardmembers note that this revised layout substantially conforms to the recommendations of the Agricultural Master Plan. The Board explicitly clarified that this is not a “cluster” development, which under the Zoning Ordinance allows the placement of homes on smaller lots than otherwise allowed by “right” in certain zones. Rather, the lot sizes in the Revised Plan conform to lot sizes that are allowed “by right” in the RDT zone. The Board pointed out that if the Applicant were to create a series of larger lots, dotted across the Subject Property, that layout would further fragment this property and undermine the purpose of the zone. Moreover, while much of the testimony in opposition to the Revised Plan argued that “farming” means tilling the soil, Boardmembers noted that “agriculture” is defined very broadly in the Zoning Ordinance,¹⁵ and concluded that many of these defined agricultural uses were likely to occur, even on the smaller lots.¹⁶ The Board majority concluded that the layout of the site clearly meets the goal of the Agricultural Master Plan by protecting vast acreage for farming use. For example, the RDT zone allows, by right, non-agricultural uses such as bed-and-breakfast lodging, small group home, mobile home, adult foster-care home, child and adult day-care facilities, and registered home occupations. Code § 59-C-9.3.

¹⁵ **“Agriculture:** The business, science and art of cultivating and managing the soil, composting, growing, harvesting, and selling crops and livestock, and the products of forestry, horticulture and hydroponics; breeding, raising, or managing livestock, including horses, poultry, fish, game and fur-bearing animals, dairying, beekeeping and similar activities, and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product.” Code § 59-A-2.1 (Definitions).

¹⁶ The Board also rejected the argument that the RDT zone was intended only include farmhouses. The Board noted that the RDT Zone itself allows many non-farming uses by right, and concluded that the District Council would know that these uses would be developed in the RDT zone.

The Board discussion also pointed out that even the Master Plan recognizes that it would be unrealistic to expect all farmland and open space in the Agricultural Reserve to be preserved, and solely for farming, and allows a “variety of land uses.”¹⁷ It states that while agriculture is “preferred,” it is not the sole use.¹⁸ In addition, the intent section of the RDT Zone in the Zoning Ordinance provides that preservation “is to be accomplished by providing large areas of generally contiguous properties suitable for agriculture and related uses”.¹⁹

2. Adequate Public Facilities

County Code Section 50-35(k) (the Adequate Public Facilities Ordinance) directs the Planning Board to approve preliminary plans of subdivision only after finding that the public facilities, including the transportation system, will be adequate to serve the subdivision. The record includes uncontested evidence that the proposed development does satisfy all the requirements of the Adequate Public Facilities Ordinance.

a. Water and Sewerage

The record includes uncontested evidence that the proposed development will employ sand mound septic systems and wells and that these will be adequate to accommodate the development.

b. Local Area Transportation Review (“LATR”)

The Application proposes 14 lots and 1 outlot. The Planning Board guidelines for the administration of the Adequate Public Facilities Ordinance requires Local Area Transportation Review (“LATR”) for projects deemed to have a “measurable traffic impact on a specific local area”, defined in the guidelines as those projects that generate 30 or more total trips during peak hours. The Board finds that this project is not subject to LATR review because it generates fewer than 30 peak hour trips. As a result, based on uncontested evidence of record, the LATR requirements of the Adequate Public Facilities Ordinance are satisfied.

3. Street Access

The Planning Board finds, based on uncontested testimony and evidence in the record, that the proposed street access to the Property is safe and adequate.

¹⁷ Agricultural Master Plan, p. 35.

¹⁸ *Id.*

¹⁹ §59-C-9.23, Montgomery County Code (2004, as amended)

4. Stormwater Management

The record includes uncontested evidence that the stormwater management concept and other related matters for the Property is acceptable as conceptually approved by the DPS.

5. Forest Conservation

The record includes uncontested evidence that the Application complies with the requirements of the Forest Conservation Law.

6. Relation to Master Plans

The Agricultural Master Plan recommends the RDT Zone for the Property. The Board discussed at length whether the proposed development, including the use of sand mounds, is in substantial conformance with the Agricultural Master Plan.²⁰

The Board majority pointed out that that the Agricultural Master Plan does not prohibit the use of sand mound septic systems in the Agricultural Reserve. While the Plan (at page 62) recommends sewerage guidelines including the recommended denial of private "alternative individual and community systems" in the RDT Zone, the Plan also recommends in the same paragraph that a study of the possible application of private alternative individual and community systems in rural open space areas be undertaken.

The Board notes that the Master Plan was adopted in 1980. The Board further notes that while in 1980, sand mounds were considered "alternative" systems, both

²⁰ The Chairman and one other Boardmember found that the proposed development was not in substantial compliance with the Agricultural Master Plan, because it did not comply with the Plan's "perc policy." They noted that, while the RDT zone specifies a density of 1 unit per 25 acres, that the Agricultural Master Plan provided for a lower density - "the population holding capacity" - and that that density was determined by the perc policy that only allowed use of septic systems and prohibited the use of "alternative systems," including sand mounds. In that regard, they concluded that the County Council in its action in 1994 on Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems did not intend to override the Master Plan perc policy; the Council merely sought to permit sand mound septic systems to replace failing septic systems, as a health measure. Since sand mounds were not permitted in the Agricultural Master Plan, and the Plan has not been amended, sand mounds could not be used in the instant case to thwart the Master Plan density limits.

State and County laws, regulations, and/or policies (all of which are part of the Record) currently do not define sand mound septic systems as "alternative" or "experimental systems." DPS has determined that sand mound septic systems are safe and appropriate for use on the Property. In fact, at the December 9, 2004 hearing, Eugene Von Gunten from the Well and Septic office at DPS testified that since 1990 the County has approved approximately 200 to 250 lots that use sand mound septic systems, including properties in the Agricultural Reserve. Mr. Von Gunten further testified that at least five subdivisions have been approved for development exclusively with sand mound septic systems.

The Record is also clear that the use of sand mound septic systems has been approved for other developments in the RDT Zone by the Planning Board and other reviewing agencies. The Board notes that its discussion on the Prior Plan at the December 9, 2004 public hearing centered on the size of the proposed lots, the configuration of those lots, and whether those proposed lots satisfied the Master Plan objective of preserving areas of agricultural land. The Record contains uncontroverted evidence that in the past six years alone, 35 lots in the RDT Zone were approved with sand mound septic systems. After consideration of all the evidence on this issue, the Board finds that the use of sand mound septic systems is permitted in the RDT Zone. The Board majority concluded that the use of sand mound septic systems on the Property substantially complies with the Agricultural Master Plan.

The majority based this decision on a number of factors. First, the Master Plan does not absolutely prohibit the use of sand mounds. While the Master Plan says "deny private use of individual and community use systems,"²¹ it Master Plan does not state that this standard is limited to those systems as they were defined in 1980. Second, "sand mounds" are explicitly defined under current law (State Regulation), and are not defined as an alternative system. Thirdly, the Board has in the past approved sand mounds to support residential development in the RDT zone, indicating an agency practice of finding these systems in conformance with the Master Plan. Finally, the majority concluded that while the Council Resolution, which states "Explore ways in which particular site restrictions to allow development by zoning to be constructed," does not allow *carte blanche* use of alternative technologies to achieve the maximum density allowed by the Zone (in this case 1 unit per 25-acres), it does reflect a policy goal to allow alternative septic technologies to be used to support zoned densities *if* proposed additional density can be provided in accordance with all other regulatory restrictions and findings (e.g., RDT zone requirements and Master Plan goals). The majority concluded that the Revised Plan so meets those goals.

In reaching this conclusion the Board noted that the Applicant substantially revised the prior preliminary plan and that the current plan preserves significant agricultural and forested areas. As calculated by the Staff, the proposed development

²¹ Agricultural Master Plan p. 62.

will result in the preservation of 353 acres of the 395 acres of farm fields and the retention of 662 of the total 704 acres (including 300 acres of forest) as agriculture or agricultural open space. The Board believes that the clustering of smaller lots in two areas on the Property is a strength of the preliminary plan because it allows more contiguous area of agricultural land as recommended in the Agricultural Master Plan.

Additionally, the uncontested evidence of record reflects that the Revised Plan conforms to the Legacy Open Space (LOS) program recommendations that the 300-acre forested portion of the site be protected through the Farmland and Rural Open Space target area. The Board majority concluded that it agreed with its LOS staff recommendations that the density be limited to a maximum of 15 lots with all remaining development rights to be separated from the property, resulting in an overall density of one unit per 47 acres, consistent with the *Legacy Open Space Functional Master Plan* recommendation that density be kept below one unit per 50 acres to keep as much viable farmland and rural open space as possible. The Board further concurs with its LOS staff conclusion that the size distribution and density of lots within the site substantially meets the reduced density goal for Legacy Open Space and does provide several lots that have the potential for continuing agriculture use.

The Board further determined that the preliminary plan is in compliance with the Rustic Roads Master Plan. As explained in the Staff Report, Staff conditioned its recommendation for the approval of this preliminary plan upon the Applicant submitting a house location and landscaping plan to Legacy Open Space Staff for review and approval prior to the issuance of building permits. The Board finds that this condition adequately ensures that the houses will be situated on the Property in a manner that satisfies the Rustic Roads Master Plan.

The Board has considered the Technical Staff's position on substantial compliance with the Master Plan, the Applicant's materials, exhibits and testimony on substantial compliance with the Master Plans, and the opponents' materials, exhibits and testimony on the question of substantial compliance with the Master Plan. The Board is persuaded for the reasons set forth herein that the proposed subdivision will be in substantial compliance with the Agricultural Master Plan and the Rustic Roads Master Plan.

ii. General Items

The subdivision Application was referred to outside agencies for comment and review, including, the Department of Public Works and Transportation, the Department of Permitting Services, and the various public utilities. None of the agencies opposed approval of the Application.

B. FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearings, the recommendations of its Staff, the recommendations of the applicable public agencies, the applicant's position, the positions of those who appeared in opposition, and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that with the conditions set forth in Section VI below:

- a) Preliminary Plan No. 1-05029 substantially conforms to the Agricultural and Rural Open Space Master Plan, the Rustic Roads Master Plan, and the Legacy Open Space Functional Master Plan for the reasons discussed in Section V.B.6 above, incorporated herein by reference.
- b) The uncontested evidence of record confirms that public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision for the reasons discussed in Section V.B.1 above, incorporated herein by reference..
- d) The uncontested evidence of record confirms that the Preliminary Plan satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The uncontested evidence of record confirms that the Preliminary Plan application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Planning Board finds that any objection concerning a substantive issue that was not raised prior to the closing of the Record is waived.

VI. CONDITIONS OF APPROVAL

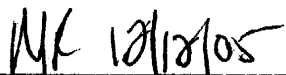
Having considered all of the evidence presented, including the comments of the outside reviewing agencies, and all of the testimony taken, the Planning Board finds Preliminary Plan No. 1-05029 to be in accordance with the purposes and all applicable regulations of the Subdivision Regulations (Montgomery County Code, Chapter 50) and Article 28 of the Maryland Code Annotated. Therefore, the Planning Board approves Preliminary Plan No. 1-05029, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 14 lots and 1 outlet.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan including requirements that reforestation occur during the first planting season after issuance of the first sediment control permit and that applicant construct a permanent, split rail fence on lots 6 and 9 to protect and delineate the forest conservation easement area. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) Prior to issuance of building permits for each lot, a house location and landscaping plan shall be submitted to M-NCPPC Legacy Open Space staff for review and approval.
- 4) Future contract of sale for proposed lot 2 shall include notification to potential buyers that the lot contains a historic resource included on the Historic Preservation Locational Atlas (Resource # 17/32, Log Cabin - Offutt Road).
- 5) Future contracts of sale for all houses shall include notification to potential buyers of the shooting range operated on the adjacent Izaak Walton League property.
- 6) Prior to recordation of plats, applicant shall conduct necessary stabilization measures for the existing historic structure in coordination with Historic Preservation Staff.²²
- 7) All road rights-of-way shown on the approved preliminary plan shall be dedicated by the applicant to the full width mandated by the Rustic Road Master Plan, unless otherwise designated on the preliminary plan.
- 8) Dedicate five (5) additional feet of right-of-way for a total of 35 feet from the centerline of Mount Nebo Road, as required for rustic road R-27.
- 9) Compliance with conditions of approval of the MCDPS stormwater management approval dated October 29, 2004.
- 10) Compliance with conditions of MCDPS (Health Dept.) septic approval.

²² At the December 9, 2004 public hearing, at the Applicant's request for clarification of this condition, the Board agreed that the term "stabilization" contained in condition number six does not mean "restoration." "Stabilization" means maintaining the roof and building so that the structure is protected from the elements.

- 11) Applicant to establish 25' Public Use Trail Easements in the following locations:
 - a. From Edwards Ferry Road to the eastern boundary of the subject property to promote access to Broad Run Stream Valley Park. Alignment to be sufficiently set back from West Offutt Road to allow a useable trail to be aligned therein that adequately protects users from road traffic, but extending no further than 35 feet from the proposed road right of way unless otherwise agreed to by Applicant and M-NCPPC staff;
 - b. South from West Offutt Road along the entire eastern border of proposed Lot 3;
 - c. South from West Offutt Road along the approximate Mount Nebo Road alignment to the southern boundary of the property sufficiently set back from Mount Nebo Road to allow a useable trail to be aligned therein that adequately protects users from road traffic but extending no further than 35 feet from the proposed road right-of-way, unless otherwise agreed to by Applicant and M-NCPPC staff; and
 - d. South from West Offutt Road through the eastern portion of the subject property to the southern property boundary, to be located east of proposed Lots 14, 12, 11 and 10, and west of the Potomac River tributary that runs from north to south through the property.
- 12) Compliance with conditions of MCDPWT letter dated November 12, 2004, unless otherwise amended.
- 13) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation, including the proposed forest conservation bank area on Lot 15.
- 14) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 15) Provide an affidavit to verify the availability of a TDR for each existing and proposed dwelling unit shown on the approved preliminary plan. Include a note and reference the affidavit on record plat.
- 16) Other necessary easements.

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]



Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, December 15, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Stoney Springs (Casey Property), Preliminary Plan No. 1-05029. Commissioner Bryant was absent.



Certification As To Vote of Adoption
Technical Writer

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TRANSCRIPT OF

PRELIMINARY PLAN NO. 1-05029 - STONEY SPRINGS

BEFORE THE

MONTGOMERY COUNTY PLANNING BOARD

March 17, 2005

COMMISSIONERS PRESENT:

DERICK P. BERLAGE, CHAIRMAN

WENDY COLLINS PERDUE, VICE CHAIR

ALLISON BRYANT

JOHN ROBINSON

MEREDITH WELLINGTON

1 MS. CATHY CONLON, DEVELOPMENT REVIEW STAFF: Mr. Chairman,
2 this is Cathy Conlon with the Development Review Division,
3 and this is the preliminary plan for Stoney Springs
4 property, plan number 1-05029.

5 CHAIRMAN BERLAGE: And given the large number of speakers,
6 excuse me, but we're going to hold strictly to all the time
7 limits and I'm going to hold you to staff time limit as well
8 so, 10 minutes please.

9 MS. CONLON: Okay, just very briefly you will recall this
10 plan was before you in December of 2004. At the time it was
11 a plan for up to 28 lots, which would have been full-density
12 of the property. It did propose 28 lots using sand mounds.
13 You did receive a number of letters and heard an extensive
14 amount of testimony at the first hearing, which raised
15 several concerns. I believe, the two main concerns were the
16 use of septic technology, i.e. the sand mounds that were not
17 available at the time of the 1980 Agriculture Resource and
18 Open Space Plan, to achieve the residential density and the
19 second concern was fragmentation and/or loss of the existing
20 farmland due to the overall number of the proposed lots and
21 the number of these lots, which were on less than 25-acre
22 size lots. The Board did discuss these issues at length and
23 I believe you generally concluded that the master plan
24 anticipates the residential development would occur at less

1 than the zoned population density in this area, and that the
2 only manner in which it should be allowed is if it preserves
3 the primary use of agriculture, and that the proposed plan
4 did not achieve that goal, and the Board did not support the
5 plan and based on that discussion, the applicant did request
6 deferral. We're here today to present the revised proposal
7 for the preliminary plan and I can reorient to you to the
8 site, but I'm going to, to hold off on that, unless you have
9 questions about where we are again. This is a 704-acre site
10 in the RDT zone. It does contain numerous stream valleys and
11 flood plain, wetlands; some of the wetlands are very large
12 and high quality. There is a total of 309 acres of existing
13 forests on the property, which is shown as green on the big
14 map that you have in front of you. The property is
15 designated as an exceptional property within the
16 agricultural reserve under the Legacy Open Space Program and
17 protection of the forested wetlands was one of the
18 priorities for designation as a legacy property. This
19 revised preliminary plan contains a total of 14 lots, which
20 remain on sand mounds and have gotten approval of their sand
21 mounds and one out-lot. There are a total of 6 lots between
22 the acreage of 3.5 and 8 acres. There is one lot that's 20.6
23 acres, 7 lots there are between 30 and 78 acres, and one
24 309-acre lot. The applicant is now proposing to sever all

1 the remaining TDRs on this property and cap the development
2 to the 15 lots that you see, potential 15 lots, you see here
3 before you today. And I would clarify that that one out-lot
4 would be eligible to convert through the minor subdivision
5 process as soon as the septic approval is achieved. This
6 proposed plan results in an overall density of 1 dwelling
7 unit per 47 acres. Staff has reviewed this plan and we
8 believe this does improve farmland preservation by
9 significantly reducing the overall number of proposed lots
10 and significantly increasing most of the proposed lot sizes.
11 This does eliminate the need for double driveways, which you
12 previously saw from Mount Nebo Road to the lots that are
13 clustered, there would be now one single driveway serving up
14 to 5 lots. This does continue to cluster the smaller lots,
15 but it locates the clusters in a manner, which maintains
16 large continuous farm fields. The cluster of lots in this
17 location of the plan are lots that are located on prime Ag
18 soils, this cluster is not an area of prime Ag soils. There
19 are 3 smaller lots in each one of these clusters, and then 2
20 larger lots, but the houses would be clustered at the end of
21 the driveway as you see on the plan. There are a total of
22 about 42 acres as I calculate it that are currently
23 agricultural fields that would not be, that they would be
24 made up in these smaller lots, so that means that a total of

1 353 acres of the currently existing 395 acres of farm fields
2 would be preserved under this plan. There would be a total
3 of 662 acres of the total 704, which are either agricultural
4 or agriculture open space. That does include the 300 acres
5 of forest. This plan before you does protect the highest
6 priority forest resources, and it protects the environmental
7 buffers in the wetlands. It does meet all the requirements
8 of the Forest Conservation Law. Once again, you have
9 received a number of letters about this plan; most of them
10 oppose the plan for the same reasons that you heard in the
11 prior hearing. Staff does believe that residential
12 development is a permitted use in the RDT zone and that is
13 permitted provided that the plan maximizes agriculture, and
14 prioritizes agriculture as defined in the plan. We believe
15 that this plan does a significantly better job of protecting
16 agricultural areas than the plan that you saw back in
17 December. We continue to believe that the master plan
18 language should not be interpreted to prohibit the use of
19 septic sand mounds as septic for in the RDT zone, and we do
20 believe that this plan is in compliance with the master plan
21 for the reason stated in the staff report. Therefore, we are
22 recommending approval of the plan with the conditions that
23 are specified in the staff report.

24 CHAIRMAN BERLAGE: Thank you. Mr. Harris, 10 minutes.

1 MS. SYLKE KNUPPEL OF THE APPLICANT COMPANY: Good
2 afternoon, for the record, my name is SYLKE KNUPPEL, I'm a
3 Development Manager for Winchester Homes. With me today are
4 Bob Harris of Holland & Knight and David McKee of Benning &
5 Associates. As you recall and as Cathy mentioned, last
6 December we presented to the Planning Board a preliminary
7 plan for 21 lots in this property with area reserved to add
8 up to 7 more for a total of 28 lots. The Planning Board
9 deferred action on the plan in order to allow us to revise
10 the number of lots and the configuration. We are pleased to
11 be back before you today with a plan that follows your
12 suggestions. Due to the opposition testimony at the earlier
13 hearing, the Planning Board first focused on the issue of
14 the use of sand mound septic systems. After hearing
15 testimony from the Montgomery County Department of
16 Permitting Services, with respect to regulations governing
17 septic systems, and reviewing the established County policy
18 permitting these sand mound systems, the regulations
19 governing such systems, and past precedent, the Planning
20 Board concluded that sand mounds are allowed to be used on
21 this property, and that they are not in conflict with either
22 the master plan or County regulations. Based on that
23 conclusion, the Board then focused on the manner in which
24 the specific subdivision plan and the individual lots then

1 before the Board would preserve agricultural land and open
2 space. The Board recommended reducing the number of proposed
3 lots and advocated the creation of larger agricultural
4 parcels. You agreed to defer action until we could revise
5 the plan accordingly. We have followed your suggestions. As
6 Bob Harris will explain, we have reduced the number of lots
7 so that we are approximately half the density permitted in
8 this zone. We have significantly expanded the agricultural
9 areas, and we have agreed to protect significant on-site
10 forest areas. The final plan is a great example of the
11 balance between residential development, agricultural
12 preservation, and forest conservation. Bob Harris will
13 briefly explain the changes and then all of us are available
14 if you have questions.

15 MR. ROBERT HARRIS, ATTORNEY REPRESENTING THE APPLICANT:

16 Good afternoon, for the record, Bob Harris. I have submitted
17 to you, and it's being passed out now, a package of state
18 regulations, County resolutions, County regulations, and
19 some related reports that deal with the issue of sand
20 mounds, and I'd like to try to put the sand mound issue to
21 rest at first. I assume the Agricultural Master Plan, you're
22 all familiar with that and that's more or less part of the
23 record already, so I didn't submit copies of that. I believe
24 that the regulations that I've just passed out to you, and I

1 did take the liberty of highlighting them, confirm that sand
2 mounds are not an alternative or innovative septic system,
3 and in fact, those provisions explicitly recognize that sand
4 mounds are permissible in the agricultural reserve. In fact,
5 if you read those references, it shows that the County
6 policy and regulations that were adopted in 1994 were
7 specifically adopted to ensure that landowners in the RDT
8 and Agricultural Reserve had a reasonable opportunity to
9 achieve their zoned density, 1 per 25 acres, and there are
10 particularly quotes in the second and third pages of those
11 documents. The County has repeatedly approved sand mound
12 systems over the years, with many in the RDT area. With
13 respect to the sand of the Stoney Springs sand mounds, these
14 mounds have been approved by the Well and Septic Office that
15 is charged with the authority of reviewing and approving
16 them. And I think in December, you folks agreed as well that
17 we have the right to use sand mound systems. So, I think
18 that issue has been put to bed, but I'm sure we'll hear more
19 on it.

20 Let's turn to the issue of preserving the agricultural
21 land, because I think that's where the Board focused its
22 comments last time. And I believe we have done a very good
23 job of responding to your comments. As Silkey mentioned, the
24 original plan would have allowed up to 1 unit per 25 acres.

1 Now, before we review the existing plan, I want to remind
2 you that there are some things to keep in mind here
3 regarding the master plan, and the RDT zone itself. First of
4 all, both the Agricultural Master Plan and the RDT zone do
5 allow density of 1 unit per 25 acres. Secondly, the RDT zone
6 allows clustering of lots, with lots as small as 40,000
7 square feet. Thirdly, the master plan did not intend to
8 restrict the RDT area to only agricultural uses, and page 35
9 of the Agricultural Master Plan specifically says it's
10 unrealistic to expect that all farmland and rural open space
11 can or should be preserved. Rather, it notes that it's
12 intended to provide for a variety of land uses, and that
13 certainly includes residential development that's a
14 permitted use within the zone. The 1- to 25-yield was in
15 fact an important issue at the time because that was seen as
16 part of the equity for the farmers whose properties were
17 being down- zoned significantly from 1 unit per 5 acres,
18 which they had been. And since that day, since 1980,
19 residential lots have repeatedly been approved in the RDT
20 and many of the properties that have been subdivided were
21 done so at a full 1 to 25 density. And many of these
22 included prime agricultural lands. Those, that sort of
23 activity is now prohibited. Now, although we believe we're
24 entitled to pursue that density, we want to try to

1 accommodate the Board's wishes, and the density has been
2 reduced significantly. If you look at the rendered plan, the
3 large plan here on the right, it shows how we will preserve
4 nearly all of the agricultural land, and an incredible
5 amount of forest open space. Now, keep in mind that's a 200-
6 scale plan, so its 2 miles across the Ag parcels themselves,
7 as Cathy mentioned, 309-acre farm all the way on the right,
8 that's where the old farm was, and that's the largest
9 compilation of prime agricultural soils. That is being
10 preserved in its entirety. There are also going to be 8
11 smaller farm lots of the 78 acres. They could be horse
12 farms, they could be a variety of other types of farms. Now,
13 the only the medium green area on that plan is not
14 agricultural size parcels, and the block of that to the
15 right is not prime agricultural soils.

16 COMMISSIONER JOHN ROBINSON: How are you defining an
17 agricultural size parcel?

18 MR. HARRIS: Twenty-five acres. Yes. And as recognized in
19 the staff report, 353 of the current 395 acres available for
20 agriculture will remain, that's the yellow area shown on
21 that plan. That's a very major amount of agricultural land.
22 Now, last year of course you placed this property within the
23 Legacy Open Space Plan based on its forest conservation
24 areas, which are on the lower right, and on the lower left.