

PLANNING COMMISSION MINUTES 2001

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December 17, 2001, 1:00 p.m.

**PLANNING COMMISSION MINUTES
(Subdivisions)**

PRESENT: Walbeck, Rossetti, Coudon, Smith, Brown, Kilby, Sennstrom, Di Giacomo, Carter, Moore, Campbell and Sample.

ABSENT: Hair.

Minutes: Motion made by Coudon, seconded by Rossetti, and unanimously carried to approve the November 19, 2001, 1:00 p.m., minutes, as mailed, with a correction to page 8, paragraph 3, sentence 1, changing acres to the singular acre, and a correction to page 5, paragraph 2, last sentence, changing D2 berm to B2 berm.

1. John Conwell presented spring knoll, phase ii, lots 2-30, frist road and russell road, final plat, seventh District.

Mr. Conwell was duly sworn according to law and testimony followed. He stated this is the final plat for Phase II. The first phase was Lot 1, which consisted of the existing farm house. This plat was before the Planning Commission last month but a few items were missing. Those have been added to the plat. The GAP has been issued.

Ms. Rossetti read the Health Department comments, a copy attached for reference.

Mr. Di Giacomo stated the zoning is NAR, which permits a maximum base density of 1 du/ 5 ac., or a density of 1/3 if bonus density is granted. This Final Plat proposes 29 lots on 87.6 acres, for a proposed density overall of approximately 1/3, with 58 acres (64%) common open space.

The Concept Plat was approved 3/19/01, conditioned on:

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- 1) The internal road names being approved by the County 911 Emergency Center prior to Planning Commission review of the Preliminary Plat;
- 2) Access to common open space between lots being marked with concrete monuments;
- 3) Additional fee simple common open space access being provided between proposed lots 13 & 14 and 25 & 26, and
- 4) A Bog Turtle habitat survey being completed prior to Technical Advisory Committee review of the Preliminary Plat.

The Preliminary Plat was approved 7/16/01, conditioned on:

- 1) Health Department requirements being met;
- 2) Department of Public Works requirements being met;
- 3) A Homeowners Association for maintenance of common open space being established with \$50 per recorded lot placed in escrow for improvements prior to recordation;
- 4) Access to common open space between lots being marked with concrete monuments;
- 5) Common open space being labeled common open space on the Final Plat; and
- 6) The Forest Conservation Plan and Landscape Plan being approved prior to Planning Commission review of the Final Plat.

The Spring Knoll Phase I, Lot 1 Final Plat was approved 11/19/01.

This Phase II Final Plat is generally consistent with the approved Concept and Preliminary Plats. However, Lot 27 is now proposed as a large lot to satisfy the open space requirement associated with bonus density eligibility. There are still 4 panhandle lots.

A 110' perennial stream buffer is required from both perennial streams present on proposed Lot 27. The streams depicted on the approved FSD must be shown on sheet 4 on Lot 27, as must the Bog Turtle habitat.

This proposal satisfies the open space requirements. 54.846 acres are required for bonus density eligibility. 18.15 acres of common open space are proposed, and the large lot consists of 40.398 acres, for a total of 58.5 acres.

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The open space access easement between proposed Lots 22 & 23 leads directly to a Stormwater Management Area, creating a potential safety hazard. Mr. Di Giacomo asked if any safety enhancement measures have been planned in that regard? Mr. Conwell stated there will be a fence from the access road.

Mr. Di Giacomo continued: No landscaping of the development envelope is required in the NAR zone.

The proposed Spring Knoll Court cul-de-sac exceeds the 600' limit of the current Road Code. Therefore, a Road Code Waiver from the Department of Public Works will be required. The road name Spring Knoll Court has been approved.

Rows of street trees are required, outside the right-of-way, along both sides of proposed Spring Knoll Court. Where feasible, the natural vegetative equivalent may be used to satisfy the street tree requirements. The Forest Stand Delineation (FSD) was approved 2/16/01. The Preliminary Forest Conservation Plan (PFCP) has been approved. The Final Forest Conservation Plan (FCP) was approved on 11/19/01. The Landscape Plan for was approved on 11/16/01. A Landscape Agreement must be executed prior to recordation. Deed restrictions for the long-term protection of the Forest Retention/Afforestation Areas (FRAs) must be recorded and noted on the plat prior to recordation. The metes and bounds description of the FRA must be shown on the record plat.

For subdivisions proposed on property contiguous to operating farms, notice shall be provided on the plat that an agricultural operation is being conducted on a contiguous property and said agricultural operation is protected from nuisance claims provided the conditions of Article I, § 4 are being complied with.

§4.2.13(i) of the Subdivision Regulations requires that the area of lots that are less than one acre in size be expressed in square feet on Final Plats. This pertains to all proposed lots except 3, 4, 8, 14, and 27. This must be corrected on the Record Plat submitted for recordation.

The title blocks on sheets 2 and 3 must reflect the fact that common open space is included on those sheets.

§4.2.13(a) 3 of the Subdivision Regulations stipulates that the Final Plat shall be 100-scale if the average lot size is less than 5 acres. Therefore, sheet 4 must at least show detail of the sewage area, well, and dwelling at that scale on the Record Plat.

Access to common open space between lots must be marked with concrete monuments. Covenants prohibiting the subdivision of the large lot must be recorded and noted on the plat prior to recordation.

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A Forest Retention/Street tree note must be added.

Unless previously established in conjunction with the recordation of Lot 1, a Homeowners Association for maintenance of common open space must be established with \$50 per recorded lot placed in escrow for improvements prior to recordation.

The figures in the Subdivision Data table do not appear to be correct. When the 4.432 acres of Public Road Right of Way and the 65.381 acres of Total Lot Area are subtracted from the 87.615 acres of Total Enclosed Area, we are left with 17.802 acres for common open space. However, the information contained on sheets 2 and 3 of the plat indicates that there are 18.15 acres of common open space.

Mr. Carter stated a stormwater management (SWM) submittal must be approved by the DPW prior to submittal for Final Plat Approval. It is currently under review but technical approval has not been granted and the submittal is not yet substantially complete. Pond #3, which is proposed to be located near the entrance of Frist Road, must be expanded for over-management purposes and, while it appears that it can fit into the space, DPW cannot assure that it will not impact Lot 30. No lot-grading plan has yet been submitted. The hazard classification for the on-site pond on Lot 1 and related items previously raised have been largely addressed, but some additional information is forthcoming, and it appears that issue will be resolved very soon.

A street and storm drain submittal must be approved by the DPW prior to submittal for Final Plat Approval. It is currently under review, but some technical issues in connection with the Road Code Waiver that was issued for internal drains remain to be resolved.

All Road Code Waiver requests must be submitted prior to submittal for Preliminary Plat approval. Road Code Waivers have been granted for internal street design, contingent upon street design modifications. Those will have to be incorporated into the street design before it is approved for final. Sight distance measurements must be provided to the DPW to establish compliance with the Cecil County Road Code. The consultant has demonstrated adequate sight distance to the east, but vegetative clearing and/or grading will be necessary to achieve the required 250-foot sight distance requirement to the west. The Department is awaiting a further submittal to show that site grading can provide the necessary sight distance to the west. DPW believes the sight distance can be achieved with site grading, but cannot guarantee it.

Guardrail must be installed on the northern shoulder of Frist Road opposite the proposed entrance to the satisfaction of DPW. This must be shown on the construction drawings.

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A 20 wide SWM Easement has been shown for the Frist Road culvert discharge near the southern property border; this should also be shown on Sheet 1. The street and stormdrain submittal should address stabilization of the outfall from Frist Road, possibly involving a drop structure. This has only been conceptually addressed by the applicant. Combination of the SWM access and maintenance easement with a Common Open Space easement between Lots 22 and 23 is not generally acceptable because of maintenance requirements. One way to address that would be to widen that to 35 or 40 feet.

Where determined necessary by the utility companies, the owner, the designer, or DPW, utilities poles must be relocated at the Owner's expense.

A PWA will be required for internal streets and stormdrains. An Inspection and Maintenance Agreement will be required for the SWM facilities.

Mr. Walbeck questioned the location of the drop structure on Frist Road. Mr. Conwell stated it is on the south end of the property. Mr. Carter stated it is an existing culvert under Frist Road that comes immediately into a steep embankment. Attempts to shore that up over the years has not worked very well. DPW asked for that to be shored up early on in the process.

Ms. Rossetti questioned where the fencing for the stormwater management pond would be. Mr. Conwell indicated it on the plat.

No one appeared in favor.

Michael Robert, 140 Frist Road, appeared in opposition. He was duly sworn and testimony followed. He stated that he is still against the project, however it appears that it is going to go through. He advised that he would like to be on board as having input into the drainage (the drop down fall out). The drainage ditch runs under ground and borders his property. That ditch doesn't handle the water during heavy downpours and the water impacts his house. He has concerns about the small drainage ditch that runs down where the old County road used to be.

Mr. Robert also is not sure how the sight distance will work out. Cars have a high visibility down but unless the road curvature changes, a child sitting along the road will not be seen, with inadequate distance to stop. If the area is cleared, the contour will change. He asked who would be in charge of mowing in order to maintain adequate sight distance? The County doesn't mow often enough in the summer. Further, there is some guardrail on the other side of Frist Road and he would like to have guardrail installed in front of his house for the protection of his children.

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Ms. Rossetti asked if the concern for Pond #3 would be addressed in this drainage? Mr. Carter stated it may or may not be. Mr. Robert stated that he gets a substantial amount of water now and if the trees are removed, the extra water will come downhill onto his property.

2. Bud Felty, Keith Baynes, and Clyde Bell appeared to present **Bell, Clyde N., Sr., et al. (Lands of), Liberty Grove Road and Canal Road, Revised Concept Plat, Seventh District.**

The applicants were duly sworn according to law and testimony followed.

Mr. Baynes submitted a letter from Mackie Brothers, marked Exhibit 1 and in the file for reference. He submitted a copy of two photographs, marked Exhibit 2 and in the file for reference. He submitted a layout of the property depicting the relocation of Lot 32, marked Exhibit 3 and in the file for reference. He submitted excerpts from the Comprehensive Plan, marked Exhibit 4 and in the file for reference.

Mr. Baynes stated this is the third time this property has been before the Planning Commission seeking concept plat approval. He offered the previous minutes and plats from September and November 2001 into the record. He displayed a color-shaded plat (marked Exhibit 5 and in the file for reference) indicating the open space areas in green and the proposed or approved developed lots in white. He also displayed a color aerial photo (marked Exhibit 6 and in the file for reference) indicating the farmed areas, developed or to be developed areas, and forest areas. He stated that the Planning Commission had concerns about the number of subdivisions in this area that have been given bonus density. There have only been two within this area that have received bonus density; Spring Knoll, which is approximately 1.5 miles away. It received unanimous approval and it appears from the minutes that bonus density wasn't even an issue. Susquehanna, which adjoins this property to the east, was also given bonus density. In September, there was an issue with the 60% open space. Lots have been changed and the 60% required open space has been exceeded. There are over 267 acres of open space between this project and the Susquehanna project. He indicated the open space areas on Exhibit 5.

Mr. Baynes advised that Mr. Bell has farmed this property for 17 years. He asked Mr. Bell if the remaining land could be used for agricultural purposes? Mr. Bell answered in the affirmative. Mr. Baynes explained that Mr. Bell has also farmed the adjoining Mackie farm. He displayed the photographs (Exhibit 2) showing the hedgerow between the properties. He stated that he has a letter from Mr. Mackie (Exhibit 1) indicating Mackie Brothers would be interested in continuing to farm the Bell property in conjunction with their farming operation. The open spaces are contiguous to allow the joint operation of farming and have been historically used in a joint operation.

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Mr. Baynes advised if this plat is approved, the preliminary plat would likely show Lot 32 moved next to Lot 30 in order to allow more area for farming. Mr. Walbeck asked if that wouldn't take more of the good agricultural land? Mr. Baynes stated no, it is all an ag area. Mr. Palmisano appeared to comment and was duly sworn according to law. He stated that Lot 32 would be more profitable if it were left where it is shown, but they moved it so there would be a larger access to the farming operation.

Mr. Baynes stated this project is a continuation of Susquehanna, which this Commission approved with bonus density. Access is through Susquehanna. The road layout is where the Planning Commission requested. He read excerpts of the Comprehensive Plan from Exhibit 4 concerning clustering that results in preservation of contiguous common open space areas in which farming can take place. There is continuous open space surrounding this subdivision. The open space can be used by the Mackie farmer, or the owner of this farm can use the Mackie property. This project cannot be seen from any of the roadways. There is no better way to preserve rural character than by placing houses where they cannot be seen. The Planning Commission requires buffers and screens to hide houses, but here they cannot be seen and it doesn't take away from the rural character. This subdivision meets all the goals and objectives of the Comprehensive Plan and is consistent with other subdivisions that have been approved in the past for bonus density.

Mr. Bell advised that all the open land has been farmed, which is about 70 acres. Mr. Walbeck stated that 50% of the land that is currently being farmed is being taken to put houses on it. Mr. Baynes stated the alternative would be to come back with 20+ houses with five-acre lots and have no ag land. The Comprehensive Plan encourages developments where the lots are clustered to maintain areas to continue to be used for agricultural purposes. The Comprehensive Plan, under Land Uses in the District, states large lot residential, that is, lots that are the essentially the same size as the permitted density, should be discouraged.

Mr. Felty stated that some of the lots on the last plan were shown almost opposite the buildings. The road has been shortened and pulled down to help cluster even better. Mr. Walbeck stated that his concern is the letter from the State that takes the County to task for developing too many lots in the agricultural area. Mr. Walbeck advised that if the County is not re-certified, there will be less money for the County to purchase land for ag preservation. Also, the Comprehensive Plan states that bonus density should only be permitted in those projects which preserve substantial open space areas and support agricultural. The agricultural is being continued, however he feels the agricultural land is being reduced by more than 50%.

Mr. Baynes stated that he doesn't interpret the State's letter the way Mr. Walbeck does. He feels that if the regulations need to be changed, then they should be changed. But this plan meets all the goals, objectives and incentives of the Comprehensive Plan, with clustering of houses to preserve agriculture, and more than 60% open space.

Mr. Walbeck read the definition of rural character. He doesn't feel this plan meets the goals of continuing agriculture. Mr. Baynes reiterated that he has a letter from Mr. Mackie stating Mackie Brothers would be willing to farm the property and Mr. Bell has testified that it can be farmed.

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Ms. Rossetti stated if this subdivision were done at one unit per five acres, and the lots were five acres in size, one of the greatest expenses would be paving.

Mr. Walbeck requested OPZ to explain certification. Mr. Sennstrom stated certification by the State allows the County to keep more funds for ag preservation in the County rather than used on a statewide basis. Those funds are from the real estate transfer tax. It allows Cecil County to encourage agricultural preservation through retention of those funds to be spent in Cecil County. Non-certified Counties wouldn't have that luxury. Certified Counties keep 75% of the ag transfer tax collected in their County. Mr. Baynes asked if the County gets any benefit for having an area preserved for ag purposes vs. having the whole area developed into residential lots? Mr. Sennstrom stated he would have to check with the State on that. The Zoning Ordinance states that when establishing open space, contiguous open space areas should be established. Mr. Baynes stated that the only way the County could ever achieve the goals of the State's letter is to not have any development at all. The State should recognize the 267 acres being preserved.

Ms. Rossetti read the Health Department comments, a copy attached for reference.

Mr. Di Giacomo stated the zoning is NAR, RCA (Critical Area portion). The NAR zone permits a maximum base density of 1 du/ 5 ac. Bonus density eligibility carries with it a permitted density of 1/3. This Concept Plat proposes 39 lots on 117.2 acres, for a proposed density of 1/3.

The Planning Commission at its November meeting disapproved a previous Concept Plat submittal for this property. In cases such as this, new submittals are reviewed on their own merit, as any previous ones are moot and without any standing. Therefore, the title "Revised Concept Sketch" is misleading.

A boundary line survey must be completed for the preparation of the Preliminary Plat for density calculation purposes.

A mini road subdivision has been designed within this proposal. The owners of proposed lots 6-11 must become members of the mini road maintenance association -- in addition to the Homeowners' Association.

Dwellings or impervious surfaces shall not occur on slopes with a grade of 25% or more covering a contiguous area of 10,000 ft² or more. On slopes between 15 and 25%, good engineering practices shall be used to ensure sediment and erosion control and slope stabilization before, during and after disturbance activities. Slopes greater than 25% must be shown again on the preliminary plat.

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A 110' perennial stream buffer is required from any perennial streams present. This buffer shall be expanded to include contiguous areas of hydric soils, highly erodible soils, and soils on slopes greater than 15% -- to a maximum distance of 160'. A 25' buffer is required around any non-tidal wetlands present. Permits are required from the (US Army) Corps of Engineers and MDE for all non-tidal wetland impacts prior to recordation.

The habitats of rare, threatened, and endangered species must be avoided. The Natural Heritage Letter indicates that there could be the potential for the presence of the White Trout Lilly and Koehne's Ammania. Therefore, a survey must be completed prior to Planning Commission review of the Preliminary Plat.

The 2.5 acres in the Critical Area are still proposed for common open space.

This proposal satisfies the common open space provisions of the NAR zone. 15% is required; approximately 21% is proposed. Proposed lot 29 would function as the large lot, and would consist of approximately 41% of the site. The new layout's open space total acreage is 72.4 acres, or almost 62% of the total. Access to common open space between lots must be marked with concrete monuments.

Mr. Di Giacomo asked why the common open space access strip off of Woodrow Lane is so much wider than that off of McCormick Drive? Mr. Felty stated that is for access to the stormwater management facilities.

Mr. Di Giacomo continued: No landscaping of the development envelope is required in the NAR zone.

The proposed mini road is only about 415' in length. Both other cul-de-sacs exceed the 800' limit of the Subdivision Regulations and the 600' limit of the current Road Code. Therefore, Planning Commission approval and a Road Code Waiver from the Department of Public Works will be required.

Rows of street trees are required, outside the right-of-way, along both sides of all internal roads. Where feasible, the natural vegetative equivalent may be used to satisfy the bufferyard and street tree requirements. The Forest Stand Delineation (FSD) has been approved. The Preliminary Forest Conservation Plan (PFCP) must be approved prior to Planning Commission review of the Preliminary Plat. The Final Forest Conservation Plan (FCP) and Landscape Plan must be approved prior to Planning Commission review of the Final Plat. A Landscape Agreement must be executed prior to recordation. Deed restrictions for the long-term protection of the Forest Retention/Afforestation Areas (FRAs) must be recorded and noted on the plat prior to recordation. The metes and bounds description of the FRA must be shown on the record plat.

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All road names have been approved.

Should the Planning Commission grant bonus density, then there can be no further subdivision of the proposed large lot (29). Covenants prohibiting the subdivision of the large lot must be recorded and noted on the plat prior to recordation.

A Homeowners Association for maintenance of common open space and turn-around and cul-de-sac islands must be established with \$50 per recorded lot placed in escrow for improvements prior to recordation.

Mr. Di Giacomo stated that the number of panhandle lots, originally reduced from six to three, has increased to four. Mr. Baynes advised that if Lot 32 is moved next to Lot 30, then one of the panhandle lots will be eliminated and the number would be reduced to three.

Mr. Carter stated a stormwater management submittal must be approved by the DPW prior to submittal for Final Plat Approval. A street and storm drain submittal must be approved by the DPW prior to submittal for Final Plat Approval.

Any applicable Road Code Waivers must be requested prior to submittal for Preliminary Plat approval. Lots 6 and 11 should be denied access to Woodrow Lane. As it stands at this time, the proposed lots and the internal roads have no access to a public road; Susquehanna Section 2 has not received Final Plat Approval; until such time as it does, these proposed lots would in effect be landlocked. Further, even after Susquehanna receives Final Plat Approval, there is no guarantee that the Susquehanna improvements will be realized within the time that lots in this proposed subdivision are sold. The applicant must alleviate this concern prior to submittal for Final Plat approval.

An Inspection and Maintenance Agreement will be required for the SWM facilities. A PWA will be required for internal streets and stormdrains.

Mr. Smith asked if there would be access to the common open space in the area of Lots 7 and 8? Mr. Di Giacomo stated that at TAC, Mr. Sutton indicated that the preference was that the common open space access not be from the mini road. Mr. Felty agreed because it is a private homeowners association and they will be maintaining that road. Mr. Smith stated that it seems like a convenient place to access.

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Mr. Palmisano stated that they platted out a 23-lot subdivision, and they are waiting for McCrone's office to send it over for the Planning Commission to peruse.

Mr. Coudon stated that he appreciates the applicant showing the overall picture.

Mr. Felty advised that Mr. Palmisano will be developing Susquehanna, therefore DPW's comments concerning access to these lots won't be an issue.

Mr. Palmisano informed the Commission that Mr. Bell would have first option to farm the property, and Mr. Mackie would have second option. Out of the 280 acres that are left open, 140 acres can be farmed.

Mr. Sennstrom advised that until the roads in the Susquehanna subdivision are built and turned over to the County, the final plat for this subdivision could not be approved.

Ms. Rossetti asked if the subdivision were developed at a density of 1:5, then why would the developer not continue to cluster? Mr. Palmisano stated that it is a matter of economics. People don't want five-acre lots. They want one-acre lots.

Ms. Rossetti expressed concern that the Planning Commission has devised a system whereby it is impossible to design subdivisions at one unit per five acres. Mr. Palmisano stated the bonus density plan uses less land and creates a greater tax base for the County. The County inherits the roads and will absorb all the costs of maintaining the public facilities. Ms. Kilby advised that bonus density does not increase the tax base. The schools in this area are already at 110% capacity. The County has deferred two construction projects for schools because it doesn't have the money at this point. This development will exacerbate that problem in this area of the County.

Ms. Rossetti referred to the case of Gaster v. Planning Commission. She feels the Planning Commission has to take the whole picture into consideration when reviewing individual projects. She is concerned with the Planning Commission granting 1:3 density, when the Ordinance assumes 1:5 density. Mr. Baynes stated that those are the rules the County operates under. The Planning Commission has consistently granted bonus density in the past when the goals and objectives of the Comprehensive Plan are met.

Mrs. Bell appeared to comment. She was duly sworn according to law and testimony followed. She stated that her family came to Cecil County 16 years ago. Over the years, it has been hard. Her husband is no longer able to farm and they now have to do something. Mr. Palmisano offered to purchase their property, but

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in order to make it feasible he must have the bonus density. Bonus density was given on the adjoining property. Also, she stated that she was under the impression that Mrs. Kilby was not allowed to speak.

Mr. Walbeck advised that the Susquehanna subdivision started out as 50 more houses than it was approved for. Mrs. Bell stated that is because that property didn't perc as well as this property.

3. Bud Felty presented **Rock Run Estates, Section 4, Phase 2, Lots 63-69, Liberty Grove Road, Final Plat, Seventh District.**

Mr. Felty stated this is the final plat for the remaining lots of Phase II, Section 4, Lots 63-69. The GAP has been issued.

Ms. Rossetti read the Health Department comments, a copy attached for reference.

Mr. Di Giacomo stated the zoning is NAR. The Concept Plat, approved February 1988, is still valid. The approved density is 1:2 with 16.3 acres of common open space and 106 lots on 222 acres.

Lots 1-6, Section 1, received Preliminary approval on 10-16-90, and Final approval on 2-19-91. Lots 1-6 were recorded on 6-24-91, leaving 202.84 acres remaining.

The Preliminary Plat for lots 7-25 was approved 7-19-93, and the Final Plat was approved on 4-17-95. Lots 7-25, Section 2, were recorded on 8-15-95, including 10.61 acres of common open space, leaving 166.99 acres remaining, which must include an additional 5.69 acres of common open space.

The Planning Commission approved Section 3 Preliminary Plat for Lots 26-44 on 3-20-00, with conditions. That Preliminary Plat for Section 3 has not gone any further.

The Section 4, Lots 45-69, Preliminary Plat was approved 8/21/00, conditioned on:

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- 1) Health Department requirements being met,
- 2) Department of Public Works requirements being met,
- 3) The owners of these lots becoming members of the Homeowner's Association for maintenance of common open space with \$50 per recorded lot being placed in escrow for improvements prior to recordation,
- 4) A Landscape Plan for a Bufferyard C along Liberty Grove Road and street trees being approved prior to Final Plat review by the Planning Commission,
- 5) A Landscape Agreement for bufferyards and street trees being executed prior to recordation,
- 6) The Final Forest Conservation Plan being approved prior to the Final Plat review by the Planning Commission,
- 7) Deed restrictions for the long-term protection of the forest retention areas being recorded prior to recordation of the plat, and the metes and bounds description of the forest retention areas being shown on the record plat,
- 8) The standard street tree and forest retention notes being included on the plat prior to recordation,
- 9) The name of the proposed road being approved by the 911 Emergency Management Center prior to Planning Commission review of the Final Plat, and
- 10) The next section presented for approval showing the balance of the required common open space, and it being accessible by the section.

The Section 4, Phase 1, Lots 45-63, Final Plat was approved 2/20/01, conditioned on:

- 1) Health Department requirements being met,
- 2) Department of Public Works requirements being met,
- 3) The owners of these lots becoming members of the Homeowner's Association for maintenance of common open space with \$50 per recorded lot being placed in escrow for improvements prior to recordation,
- 4) A Landscape Agreement for bufferyards and street trees being executed prior to recordation,
- 5) The areas of proposed Lots 47-52 and 57-62 being expressed in square feet;
- 6) Deed restrictions for the long-term protection of the forest retention areas being recorded prior to recordation of the plat, and the metes and bounds description of the forest retention areas being shown on the record plat,
- 7) The next section presented for approval showing the balance of the required common open space, and it being accessible by the section;

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- 8) The standard street tree and forest retention notes being included on the plat prior to recordation;
- 9) The record plat for this section being reduced by one lot, with the removal of proposed Lot 63; and
- 10) The record plat reflecting the approved street name of Nicholas Alexander Drive.

Because of condition # 9, Lot 63 was not included in the Section 4, Phase 1 Record Plat, recorded 4/24/01. Therefore, Lot 63 has been included in this Final Plat.

The Section 5, Lots 71-101, and 8.38 acres of common open space, Preliminary Plat was approved on 5/21/01 conditioned on:

- 1) Health Department requirements being met;
- 2) Department of Public Works requirements being met;
- 3) The owners of these lots becoming members of the Homeowners Association for maintenance of common open space with \$50 per recorded lot placed in escrow for improvements prior to recordation.
- 4) The Final Forest Conservation and Landscape Plans being approved prior to final plat review by the Planning Commission.
- 5) Notice being provided on the plat that an agricultural operation is being conducted on a contiguous property and said agricultural operation is protected from nuisance claims provided the conditions of Article I, Section 4 are being complied with.
- 6) The GAP being issued prior to Planning Commission review of the final plat, and
- 7) Permits being issued by the Maryland Department of the Environment and the U.S. Army Corps of Engineers for both stream/wetland crossings prior to recordation.

This Section 4, Phase 2 Final Plat is generally consistent with the approved Concept and Preliminary Plats.

Assuming that Sections 3 and 4 (Phase 2) receive Final Plat approval, the remaining subdivision potential for this property is an additional 36 lots which must include the remainder of the required 16.3 acres of common open space. The remaining balance of common open space to be provided is 5.69 acres. The Section 5 preliminary plat was approved with 8.38 acres of common open space, which exceeds the required balance that remains.

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The common open space requirement shall be satisfied in the proposed Section 5 of Rock Run Estates, in accordance with the approved Concept Plat. The lot owners of all sections must have access to the more than 16.3 acres of common open space.

Mr. Di Giacomo asked how the owners of these proposed lots will access common open space? Mr. Felty stated those lots would access like the other sections. Mr. Di Giacomo stated it has road frontage access. It would be helpful to label the common open space for Section 5 area. (Those lands should be shown as proposed Section 5 common open space.) Any access to common open space between lots must be marked with a concrete monument.

The owners of these lots must become members of the Homeowners Association for maintenance of common open space, with \$50 per recorded lot placed in escrow for improvements prior to recordation.

No landscaping of the development envelope is required in the NAR zone.

Rows of street trees are required outside the right of way along both sides of Nicholas Alexander Drive. Where feasible, the natural vegetative equivalent may be used to satisfy the street tree requirements.

The name Nicholas Alexander Drive has been submitted and approved by the County 911 Emergency Center.

The Final Forest Conservation Plan (FCP) and Landscape Plan have been approved. A Landscape Agreement must be executed prior to recordation. Deed restrictions for the long-term protection of the Forest Retention/Afforestation Areas (FRAs) must be recorded and noted on the plat prior to recordation. The metes and bounds description of the FRA must be shown on the record plat.

Mr. Carter advised that all technical requirements of the Department of Public Works have been met.

Ms. Rossetti stated the GAP is for 101 lots but there are 106 lots proposed. Mr. Di Giacomo stated there are an additional 31 lots in Section 5 that have preliminary approval and seeking final approval here. The density was approved for 106 lots, but this brings the total to 101 lots.

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GENERAL DISCUSSION:

1. Mahoney Decision and Appeal - Mr. Walbeck advised that he sent a letter to the Planning Commission members concerning the Mahoney appeal. When he sent the letter, it was shortly after he received a letter from Chuck Smyser explaining how the Health Department arrived at their recommendation. Based on that letter, it appeared that the Planning Commission was not on strong ground. He requested input from the Planning Commission on whether to let the appeal go forward. Mr. Sennstrom advised that Mr. Smyser's letter was sent after the Planning Commission's decision and appeal were filed and would have no place in the court case. The appeal hearing can only be based on testimony heard at the meeting that denied the concept plat.

Ms. Campbell advised that a previous appeal (Thomasville) had a high water table allegation. Judge Rollins said the Planning Commission must defer to the experts, i.e. the Health Department. Also, there was the High's appeal and in that case the citizens testified to an area of expertise of the State Highway Department. Judge Rollins ruled that the citizens could have input to the traffic conditions. However, the current appeal is more like the Thomasville appeal where the Planning Commission has to defer to the Health Department. She explained that the Planning Commission can't do anything to halt the appeal. It can only be withdrawn by the appellant. However, if the Commission feels that their position may change based on the letter from Mr. Smyser, then they could possibly accept a re-application from the applicant.

Ms. Rossetti stated that the Health Department found the well that was in question and utilizing that well in conjunction with wet season testing was deemed appropriate by the Health Department. Mr. Moore advised that the Health Department located the well in relationship to where the other testing was done, as well as the elevation and spring. He explained the Health Department's procedure. Typically in the 1970's, perc tests were done in wet weather season and if one perc hole was in the sewage area on the preliminary plat, then that was all the Health Department did. In 1979, the County bored seven or eight monitoring wells to determine when the wet season started and ended. The 10% additional testing can be done out of season.

Ms. Rossetti stated that she is not convinced that the dryness of last year didn't preclude seeing a perched water table would exist in other years around the edge of that property. She stated that she wished for the appeal to move forward. Mr. Brown stated that the Commission made their decision based on the Health Department comments and the comments of the residents, including the farmer that farms that ground. Therefore, he also would like to see the appeal move forward.

There were no further comments.

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Item B. Decisions.

1. Spring Knoll, Phase II, Lots 2-30, Frist Road and Russell Road, Final Plat, G. W. Stephens, Jr., Seventh District.

Motion made by Rossetti, seconded by Brown and unanimously carried to disapprove, due to outstanding issues regarding stormwater management plans and verification of adequate sight distance to the west along Frist Road.

Smith abstained.

2. Bell, Clyde N., Sr., et al. (Lands of), Liberty Grove Road and Canal Road, Revised Concept Plat, McCrone, Inc., Seventh District.

Motion made by Rossetti to disapprove based on the lack of necessity for bonus density; in this case, based on rural character. Motion died for lack of a second.

Motion made by Coudon, seconded by Smith, and carried to approve, conditioned on: (1) the sensitive species survey being completed prior to Planning Commission review of the preliminary plat, and (2) the relocation of Lot #32 occurring and being placed next to the current Lot #30.

Rossetti opposed.

3. Rock Run Estates, Section 4, Phase 2, Lots 63-69, Liberty Grove Road, Final Plat, McCrone, Inc., Seventh District.

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Motion made by Smith, seconded by Coudon, and unanimously carried to approve, conditioned on: (1) Health Department requirements being met, (2) Department of Public Works requirements being met, (3) the owners of these lots becoming members of the Homeowners Association for maintenance of common open space with \$50 per recorded lot being placed in escrow for improvements prior to recordation, (4) the Landscape Agreement being executed prior to recordation, (5) deed restrictions for long-term protection of the forest retention areas being recorded prior to recordation of the plat, and the metes and bounds description of the forest retention area being shown on the record plat, and (6) the next section presented for approval showing the balance of the required common open space, and that it be accessible from this section.

NEXT MEETING: January 22, 2002

Meeting adjourned at 3:30 p.m.

Deborah J. Sample

Administrative Assistant