JUN 2 8 2011

MONTGOMERY COUNTY PLANNING BOARD

MCPB No. 11-48
Preliminary Plan No. 120050740
Hilltop Farm
Date of Hearing: May 26, 2011

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review preliminary plan applications; and

WHEREAS, on February 23, 2005, Hilltop Farm, Ltd. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property to create eight (8) lots on 232.7 acres of land located on the south side of West Old Baltimore Road, the west side of Slidell Road, the north side of Barnesville Road and the east side of Peach Tree Road ("Property" or "Subject Property") in the Agricultural and Rural Open Space master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120050740, Hilltop Farm ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") provided the Board with a memorandum dated May 26, 2006, setting forth its analysis and recommendation for approval of the Application subject to certain conditions; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, the Planning Board held a public hearing on the Application on June 8, 2006 and, in response to a request from the applicant deferred action on the Application to allow additional time to provide information to clarify certain issues raised by the Board; and

WHEREAS, Staff provided the Board with an updated memorandum dated June 18, 2007 containing its further analysis and recommendation for approval of the Application subject to certain conditions; and

WHEREAS, on July 19, 2007, following review and analysis of the Application by Staff and the staff of other governmental agencies, the Planning Board held a public hearing on the Application, and

WHEREAS, on July 19, 2007, the Planning Board voted to deny the Application; and

WHEREAS, the Applicant sought judicial review of the Board's denial in the Circuit Court for Montgomery County; and

WHEREAS, the Circuit Court found that the Board's denial of the proposed subdivision was improper, and ordered the Board to approve the plan with certain conditions; and

WHEREAS, the Board appealed the Circuit Court's decision to the Maryland Court of Special Appeals, which affirmed the Circuit Court's determination that the Board had improperly denied the proposed subdivision but reversed the portion of the Circuit Court's order that dictated the conditions of approval; and

WHEREAS, the Court of Special Appeals remanded the Application back to the Board with an order to approve the proposed subdivision with such conditions that the Board deems appropriate; and

WHEREAS, on May 13, 2011, Staff provided the Board with a revised memorandum containing further discussion of the Staff's analysis setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions; and

WHEREAS, on May 26, 2011, following review and analysis of the Application by Staff and the staffs of other governmental agencies, the Planning Board held a public hearing on the Application; and

WHEREAS, on May 26, 2011 the Planning Board approved the Application, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley, with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor and Commissioners Alfandre and Presley absent;

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board APPROVES Preliminary Plan No. 120050740 to create 8 lots on 232.7 acres of land located on the south side of West Old Baltimore Road, the west side of Slidell Road, the north side of Barnesville Road and the east side of Peach Tree Road, in the Agricultural and Rural Open Space (AROS) Master Plan area; subject to the following conditions;

1) Approval under this preliminary plan is limited to eight lots for eight one-family residential dwelling units.

2) Compliance with the conditions of approval of the preliminary forest conservation plan, including development and implementation of an invasive management control plan for all areas within the proposed forest conservation easement prior to using any forest bank credits. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
3) The lots approved under this application may be recorded by plat(s) individually or simultaneously in the land records of Montgomery County, however, Lot 8, which includes the forest conservation easements established for Lots 1-7, must be platted either prior to or simultaneously with the recording of the first plat for any one of Lots 1-7 as shown on the preliminary plan.
4) The record plat(s) must reflect a Category I easement over all areas of stream valley buffers, forest conservation areas and must properly denote any established forest bank.
5) The record plat showing Lot 8 must reflect a note as follows, "Lot 8 as shown hereon is limited to agricultural and related uses."
6) Prior to recordation of the plat for Lot 8, the tenant trailers shown on Lot 8 must be removed to the satisfaction of MNCPPC technical staff.
7) The record plat(s) showing any or all of Lots 1-7 must include a note as follows; "Lots 1 through 7 as shown hereon, are created pursuant to the Preservation Easement Agreement between the Applicant and Montgomery County, Maryland for the sole purpose of constructing dwellings for the personal use of the Applicant or children of the Applicant Partnership's individual partners."
8) The deeds conveying ownership of lots 1-7 as shown on the preliminary plan, must be only in the name of the child/owner as required by the Preservation Easement Agreement. A copy of the deed shall accompany the building permit application for each lot.
9) Prior to issuance of building permits, the Applicant must enter into a Covenant, to be recorded in the Land Records of Montgomery County, Maryland that restricts the ownership of Lots 1-7 to the Applicant or children of the Applicant Partnership's individual partners. The restriction shall apply for a period of Five (5) Years commencing on the date a building permit is issued to construct a dwelling unit on each such lot. This condition does not modify any stricter limit on the transferability of lots 1-7 that may be contained in the preservation easement granted to the Office of Economic Development.
10) Prior to recordation of the initial plat, the Applicant must obtain a release from the Montgomery County Department of Economic Development. Said release shall include a copy of the final plat drawing.
11) The septic line to serve Lot 7 must be directionally bored under stream invert at the location shown on the approved preliminary plan. A pre-construction meeting with MNCPPC enforcement staff is required prior to commencement of this activity.

12) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 30, 2005 and as updated on March 29, 2011. These conditions may be amended by MCDPS provided they do not conflict with other conditions of the preliminary plan approval.
13) The Applicant must comply with the conditions of MCDOT letter dated May 8, 2006. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
14) The Applicant must comply with the conditions of the Montgomery County Fire and Rescue Services (MCFRS) letter dated February 6, 2006. These conditions may be amended by MCFRS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
15) The Applicant must comply with the conditions of MCDPS (Health Dept.) septic approval dated May 11, 2005. These conditions may be amended by MCDPS provided they do not conflict with other conditions of the preliminary plan approval.
16) The Applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Functional Master Plan for Rural and Rustic Roads, unless otherwise designated on the preliminary plan.
17) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
18) The record plat must reflect a note stating that a TDR is available and has been reserved for each of the lots shown on the plat.
19) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution for this action.
20) Other necessary easements shall be shown on the record plat.
21) Prior to approval of the Final Forest Conservation Plan, and prior to recordation of the first record plat, the Applicant must recertify the Natural Resources Inventory/Forest Stand Delineation for the property to reflect any changes to the natural features and to look for habitat of rare, threatened, or endangered species. Prior to Staff approving the Final Forest Conservation Plan, the Applicant must apply to DNR and Staff must receive a response indicating whether DNR has determined the existence of any rare, threatened and/or endangered species and/or habitat of endangered species on the property. In the event that DNR does determine such habitat or species exist on the property, the Applicant and Staff shall coordinate with DNR to determine the appropriate buffer to be applied to the property.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Agricultural and Rural Open Space (AROS) master plan establishes agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. For this plan, the majority of existing agricultural operations will be maintained on Lot 8, where an existing 207 acre farm operation is located. The seven smaller lots all meet the minimum size allowed by the zone and have been reduced substantially to the minimum size necessary for the house, septic systems, and well. The Board asked for a Staff analysis of the potential to further reduce lot sizes. Staff explained that while it was technically possible to reduce the size of proposed Lots 6 and 7, the resulting lot layout would create areas of property that would not be at all conducive to farming and would likely have to be under control of a homeowners association for maintenance, which would be impractical for such a small subdivision.

In addition to minimizing the lot sizes, the proposed subdivision locates the residential lots where they will least interfere with agricultural activity. The portion of the site allotted for the seven lots is in an area that is currently capable of being farmed, but is separated from the critical mass of the operating farm on proposed Lot 8 and further buffered from the ongoing agricultural activity on Lot 8 by an existing hedgerow. Further, the approval of this preliminary plan and fulfillment of the terms of the Easement will assure that the 208 acre farm lot, or approximately 88% of the existing farmable area, remains available for agriculture. Because this application promotes and protects agricultural opportunities by minimizing the impact of the residential development, the Planning Board finds the proposed preliminary plan conforms to the overriding goals of the Agricultural and Rural Open Space master plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision*

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. The subject site is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. Sidewalks are not recommended along any of the Rustic Roads and traffic volume is sufficiently low where pedestrians can use the road pavement or edge of roadway should they need to. The Applicant will be

required to dedicate the proper master plan and Rustic Road Functional master plan right-of-ways at the time of record plat. Proposed access via private driveways will be safe and adequate as shown on the plan. The local road network will not be overburdened by the additional traffic generated by this development.

Other public facilities and services will be adequate to serve the proposed dwelling units. Local utilities have found that their respective utility, if available in this area, is adequate to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the private well locations and septic systems for all of the proposed lots. Additionally, the two tenant trailers have not passed septic percolation testing as of this date and must be removed prior to recording the plat for Lot 8.

The application has been reviewed by the MCFRS, which has determined that the Property has appropriate access for fire and rescue vehicles. All existing public utilities to the residence are adequate, new septic reserve areas and well locations have been approved. Other public facilities and services, such as schools, police stations, firehouses, and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application is not subject to the School Facilities Payment because all schools in the local high school cluster are operating at acceptable capacities. The Board finds that all public facilities, utilities, and services are adequate to serve the proposed lot and use.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

Pursuant to Section 50-29(a)(1) of the Subdivision Regulations, the Board finds that the size, shape, width, and orientation of the lots are appropriate for the location of the subdivision taking into account the recommendations of the AROS master plan and the type of development contemplated, which for this application is both residential and agricultural. The Staff Report illustrates the location of the clustered lots (Lots 1-7) in relation to other existing lots and homesites in the general area defined by the intersection of West Old Baltimore Road and Slidell Road. The pattern of existing lots and parcels varies, but for the most part, many of the lots and their respective house footprints are oriented in close proximity to the roads that serve the area. Some lots are situated so that the homes are removed from the road and served by extended driveways from the nearest road. These characteristics are shared by the proposed lot cluster. Four of the seven proposed lots provide for house locations that are oriented to the street, in close proximity to West Old Baltimore Road. Three of the seven proposed lots provide

for house locations removed from the road, again, a characteristic that can be found elsewhere in the general vicinity.

The AROS master plan makes no specific recommendations as to the appropriate size, shape, width, or orientation of lots, but it does contain the overriding goal to preserve agriculture to the maximum extent possible. This has been interpreted to mean that residential lots, while permitted, are to be sized and located to not unduly infringe on the critical mass of agricultural opportunities that remain in the Agricultural Reserve. The clustering of the seven lots on 25 acres of the 232 acre farm results in preservation of almost 90% of the agricultural opportunities currently available on the Property. The Board finds that proposed Lots 1-7 are appropriate with respect to size, shape, width and orientation and that the location of this cluster optimizes the preservation of the agricultural opportunities on the overall subject property and complies with Section 50-29(A)(2) of the Subdivision Regulations.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and protects sensitive environmental features.*

The application complies with the Planning Board adopted *Environmental Guidelines* and Section 50-32 of the Montgomery County Subdivision Regulations pertaining to preservation of environmentally sensitive areas. The site includes 44.2 acres of environmental buffer, 30 acres of floodplain and 12 acres of wetlands. These environmentally sensitive areas are associated with the Bucklodge Branch, which traverses the site. The preliminary plan depicts only one encroachment into the buffers, that being the septic line for Lot 7. This encroachment is necessary to connect the septic tank to the approved septic drain field and reserve area on Lot 8. The Applicant provided documentation proving that all reasonable efforts to locate alternative septic systems have failed. All percolation test pits on Lot 7 revealed shallow rock and slopes too steep to accommodate septic systems Based on the test pits and slopes, it was determined that no feasible septic reserve area could be established on Lot 7 and the closest available area for satisfactory percolation was on Lot 8 which necessitates the stream crossing. The APAB notes that the crossing of the stream with the septic line is allowed by the agricultural easement and explains that agricultural activity can continue on top of approved septic reserve areas.

To minimize impact to trees and the stream, MCDPS – has approved pumping the effluent, and the Applicant is required to tunnel this septic line the stream channel. This technique will preserve the stream and its banks. An area has been identified on the Plan along the stream section where the vegetation in the

stream buffer is mostly non-native and invasive shrub species. The septic line will impact no forest within the buffer.

A speaker at the Hearing, Dr. Peter Eeg, testified that he had treated an injured turtle brought to him by a person who had found it on the Subject Property. Dr. Eeg stated that the turtle was a Bog Turtle, a protected species.

The Board accepted suggestions from Staff and Counsel in response to Doctor Eeg's assertion and noted that the Natural Resources Inventory/Forest Stand Delineation was to be re-certified as it was more than 2 years old. This resolution requires the Applicant to submit a recertified Natural Resource Inventory/Forest Stand Delineation to the Maryland, Department of Natural Resources (DNR) for a review and documentation of the existence of any rare, threatened, or endangered species on the Subject Property. DNR is to provide staff with a report as to the existence of any such species on the Property and to recommend any protective measures if such species are found. Condition #21 of this Resolution has been added to address the Board's determination that DNR should provide such an evaluation to Staff. With this requirement, the Board finds that the Plan adequately protects sensitive environmental features on the Property.

Forest Conservation

The Application complies with Chapter 22A of the Montgomery County Code, the Forest Conservation Law. Section 22A-5(b) of the Code allows exemptions from the forest conservation requirements for properties that commit to continue commercial agriculture under a Declaration of Intent. Therefore, all but the 25 acres where the residential lots will be located are exempt. To meet forest conservation requirements, the Applicant will preserve 10.4 acres of existing forest on the exempted and farmed portion of the property.

The Applicant's preliminary forest conservation plan shows 58.18 acres of land on proposed Lot 8 to be included in a Category I forest conservation easement. This area includes existing forest within and outside of the approved environmental buffers, plus unforested portions of environmental buffers. It is the Applicant's intent to create a forest conservation bank within this easement area. The area included in the forest conservation bank includes 53.35 acres of existing forest and 4.83 acres of unforested areas. Staff noted the presence of invasive plants in some of the forest stands identified on the NRI/FSD. Therefore, a condition of approval has been included requiring the Applicant to develop and begin implementing an invasive species management control plan on all areas included in the proposed forest conservation easement area before

any forest conservation bank credits can be used. No specimen trees are to be disturbed; no tree variance is required.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on March 30, 2005 which includes on-site, non structural methods to provide water quality protection. Water quantity controls will be provided using the same non-structural methods. MCDPS has provided an administrative waiver letter dated March 29, 2011, which makes the finding that the stormwater management concept approved in 2005 remains valid with the requirement that quantity control now be provided using the same non-structural methods that are to be used to provide water quality controls. The Board finds that runoff and drainage will be adequately controlled by this proposal.

BE IT FURTHER RESOLVED, that the date of this Resolution is JUN 23 2011 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, at its regular meeting held on Thursday, June 16, 2011, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board

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MCP-CTRACK

From: Joy Johnson [Joy@knopf-brown.com]
Sent: Friday, July 08, 2011 1:33 PM
To: MCP-Chair
Cc: brown@knopf-brown.com
Subject: Petition for Reconsideration Hilltop Farms
Attachments: Affidavit of Peter Eeg.pdf; Petition For Reconsideration Resolution 11-48.pdf

Dear Chair Carrier,

Attached please find a Petition for Reconsideration in the Hilltop Farm matter, Resolution No. 11-48, dated June 28, 2011, for Preliminary Plan No. 120058740 and an affidavit of Peter Eeg for filing today. Please acknowledge receipt of these documents today.

Sincerely yours,

Joy Johnson
Office Administrator

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476, 929 A.2d 958, 980 (2007) (citing Coleman v. Anne Arundel County Police Dept., 369 Md. 108, 142, 797 A.2d 770 (2002)).

The fairness of a hearing can be undone in many ways, including the unintentional and inadvertent. In this case, Petitioners do not assert any intentional unfairness; yet, nonetheless, Petitioners were effectively deprived of a fair hearing as detailed below.

PRIOR PROCEEDINGS

The Plan came before the Board the first time on June 8, 2006 with a favorable recommendation from Staff. Following a barrage of negative comment from Board members, the applicant sought and was granted a deferral. Rather than materially change the Plan, however, the applicant changed counsel, and the Plan, essentially unchanged, went through a second hearing on July 17, 2007, again with a favorable staff recommendation. This time a vote was taken, and the Plan was unanimously rejected, 5-0, the Board finding that the applicant had failed to demonstrate that no more could be done to minimize the size of the seven Residential Lots. Resolution 08-10 (March 14, 2008) incorporated the Board's findings in support of denial of the Plan.

THE MAY 26, 2011 HEARING

At the May 26, 2011 hearing, the same Plan was back before the Board after appellate litigation on Resolution 08-10 had resulted in a remand order from the Circuit Court directing the Board to approve the Plan, albeit with such conditions as were deemed appropriate. The Staff Report of May 13, 2011 for the third time recommended approval, this time noting that

> in this proceeding the Board is limited to considering the conditions under which the proposed subdivision should be approved.

Staff Report 2. This limitation was reinforced in my mind in conversation with Board Counsel, who advised that he would not endorse the Board's giving opponents of the Plan a "second bite at the apple" to introduce evidence at the hearing that the Residential Lots were not adequately minimized. As a result, I advised my clients that they should not attempt to introduce evidence to support disapproval of the Plan on this basis. Eeg Aff. ¶¶7-8.

At the hearing, I advised the Board that my clients and I were not attending to urge denial of the Plan under the then-present circumstances. In fact, we presented no evidence directed at the lot minimization issue, even though my clients wanted to address this issue if given the chance. Id. ¶¶9-10.

I was unable to stay for the entire proceeding, because my May 18, 2011 request for a one-week postponement in the hearing due to an unavoidable scheduling conflict with an OZAH hearing was denied. The Chair attempted to resolve the conflict by getting OZAH to postpone its hearing by two hours, but at that point in time, when I was obliged to leave, the Board's hearing in this case was still under way.

As recounted by Dr. Eeg in detail, after I left, which was after the public hearing portion, he sat by helplessly while the discussion with Staff turned into an elaborate exercise of detailing how, after over five years of insistence that lot sizes had been minimized, and after the parties had expended tens of thousands of dollars of appellate litigation over this very point, **the lots could in fact be reduced further in size.** Eeg Aff. ¶¶11-12. And in what may be the ultimate irony in this much-prolonged case, the

illustrative example chosen by Staff of what could be done was a 5-acre parcel, displayed for the first time after my departure, of land immediately adjacent to Dr. Eeg's property – land previously leased to and **farmed** by him. Id. ¶5.

Staff speculated that shrinking lots 6 and 7 in this manner would produce an "orphan parcel" with "nil" agricultural potential and that someone needed to own, maintain and pay taxes on it. Id. ¶13. But if the Staff Report had disclosed that this would be a legitimate issue for public input prior to Board consideration of whether to approve the Plan (as opposed to being obliged to approve it), and had presented facts and argument to that effect before the public hearing portion of the proceedings, Staff's arguments and speculation on the "nil" agricultural potential of the "orphan parcel" would have been squarely refuted by my clients. Eeg Aff. ¶¶9, 13.

ARGUMENT

Because of the manner in which the hearing was conducted, Petitioners did not have a full and fair opportunity to counter this speculative "evidence." The end result was the following finding in the Resolution:

> The Board asked for a Staff analysis of the potential to further reduce lot sizes. Staff explained that while it was technically possible to reduce the size of proposed Lots 6 and 7, the resulting lot layout would create areas of property that would not be at all conducive to farming and would likely have to be under control of a homeowners association for maintenance, which would be impractical for such a small subdivision.

Id. at 5. The procedural unfairness of including this finding in the Resolution based on post-hearing colloquy with Staff, is underscored by the Chair's clearly expressed recognition that the hearing was understood by the public **not** to be to decide the merits, i.e., whether to approve the subdivision in its current form, but only about what the

conditions of approval should be. As the Chair put it, "we didn't give anybody the opportunity to comment on the merits of the case." Eeg. Aff. ¶14.

The Board simply cannot have it both ways. It cannot limit the public hearing to conditions and then consider, after the hearing, evidence on the merits of the Plan. As the Chair clearly understood by her remarks, the parties who had objected to this Plan with their time, energy and resources for years came to the hearing on the understanding that there would be no opportunity, given the remand order, to seek Plan denial on the merits, i.e., on grounds of failure to minimize lot sizes. Eeg Aff. ¶¶7-10. Yet after the opportunity for public input, this issue was suddenly a subject of discussion, as if it were a live issue all along, when the most involved part of the public was led to believe that the remand order from the courts effectively foreclosed consideration of Plan disapproval on this basis.

Indeed, requesting as I did by letter of May 17, 2011, a postponement of the hearing until the dispute about the proper wording of the remand order was resolved makes no sense if I had understood the lot size issue to be open for further evidence and discussion. Consider also the effect on the outcome if the lot size discussion that did take place had instead caused a majority of the Board to conclude that the lots **were larger than necessary**. The Board could not, as a "condition" of approval, require that the subdivision lines be substantially redrawn. That would not be subdivision approval; it would be a finding that a new plan of subdivision had to be created and the old one denied.

The procedural unfairness of the hearing is obscured by the Board's Resolution, which reads as if the Board felt free to re-examine the evidence and make new

evidentiary findings. In fact, there does not appear to be any new evidence in the record. Resolution 11-48 makes findings on lot minimization with no acknowledgement of recognition that the Board, while comprised of different members, had earlier made clearly contrary findings on lot size in Resolution 08-10. The new findings in Resolution 11-48 would be an impermissible "mere change of mind," but for the remand order from the courts directing approval of the Plan.[1]

In short, as Resolution 11-48 is worded, the Board has effectively concluded that the lot minimization issue could be considered anew. The Board should rectify the prejudicial confusion about the scope of the hearing by ordering reconsideration of this matter. It should be made clear in advance of the hearing that the Plan is potentially subject to revision if the evidence adduced at the hearing on this issue warrants it. In view of Petitioners' position on appeal at this time that the remand order should not impair this Board's ability to judge the merits of the Plan, Petitioners urge the Board to conclude unambiguously that it does have the right to decide whether to augment the record and decide the merits accordingly. To that end, it should conduct a hearing that provides Petitioners with a full and fair opportunity to address the lot minimization issue. At that hearing, Petitioners will make clear their willingness to become the parents of the "orphan parcel" that can and should be created by properly minimizing the sizes of the

[1] In 2008, this Board, when comprised of five different members, made unanimous findings on the same record as was before the Board in May 2011. If today's Board members view the merits differently than the Board did in 2008, the Board must respect the findings of the predecessor Board. See Kay Constr. Co. v. County Council for Montgomery County, 227 Md. 479, 177 A.2d 694, 700 (1962) (reversing a Council rezoning decision that was a "mere change of mind by substitution for one councilman of another who holds contrary views from those of his predecessor."); Schultze v. Montgomery County Planning Board, 230 Md. 76, 185 A.2d 502, 505 (1962).

Residential Lots and augmenting the agricultural potential of the rest of the farm. Eeg Aff. ¶15.

Petitioners should not be denied relief on account of their failure to register objection to how the hearing was conducted after the close of the public hearing portion. My clients did not know whether they could have interjected themselves into the post-public hearing discussion to object, and it is unlikely they could have properly formulated the objection in any event. And I was not there to do it for them only because of the way in which my request to postpone the hearing for a week was handled by the Chair, as recounted above.

Finally, Petitioners wish to note that they concur in the grounds for reconsideration presented by the other Petitioners in this case. We add only that the fundamental defect of the lack of ownership of the property proposed for subdivision is not something that can properly be ignored or left to private litigation. This is in marked contrast to the Board's policy of staying out of disputes on subordinate property right claims that may be precipitated by the pendency of an application before the Board – i.e., easements, covenants, licenses and other property encumbrances. Ownership, or the duly authorized and acknowledged agency of the owner, is central to the obligation to devote public resources to Board analysis of an application, and that centrality does not change however many weeks, months or years it takes to adjudicate the application

CONCLUSION

For the foregoing reasons, the Board should grant reconsideration of its approval Preliminary Plan No. 120050740, i.e., Resolution No. 11-48 (June 28, 2011).

Respectfully submitted,

David W. Brown
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Rockville, MD 20850
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July 2011, a copy of the foregoing Petition for Reconsideration was mailed, first class, postage prepaid, to:

Stephen J. Orens, Esquire
Rebecca D. Walker, Esquire
Miles & Stockbridge, P.C.
11 North Washington Street
Rockville, Maryland 20850

David Lieb, Esquire
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Allan A. Noble, Esquire
Budow and Noble, P.C.
Suite 500 West, Air Rights Center
7315 Wisconsin Avenue
Bethesda, Maryland 20814-3206

as well as all other parties of record.

David W. Brown

AFFIDAVIT OF PETER H. EEG

1. I, Peter H. Eeg, am over eighteen years of age and competent to testify as to the matters set forth below.

2. This Affidavit is submitted in support of the Petition for Reconsideration, filed by me, my wife Cynthia, and Julius and Anne Cinque, of Montgomery County Planning Board ("Board") Resolution No. 11-48 (June 28, 2011) approving Preliminary Plan No. 120050740 ("Plan").

3. Along with my wife, Cynthia Eeg, I am the owner of and reside in a home at 16400 W. Old Baltimore Road, Boyds, Maryland 20841. Our 16-acre property abuts the property subject to the Plan or on the east and south sides.

4. My wife and I have been opposed to the Plan ever since it was submitted to the Board in February 2005. We have consistently maintained before the Board that the Plan does not adequately minimize the sizes of the seven (7) smaller lots to be carved away from the farm property by the Plan (the "Residential Lots").

5. My wife and I use our abutting property to grow hay for horses on most of our acreage. Immediately to the east of us is the 25-acre portion of Hilltop Farms that is to comprise the Residential Lots, with Lot 7 being immediately adjacent to my property. Also abutting on the east is a small portion of the main farm that is an approximately 5-acre rectangle that juts out from the main farm area. Before the advent of the Plan, under arrangements with the former operator (Karen Barber) of Hilltop Farms, this 30 acres adjacent to our property had been leased under a hand shake agreement to us for agricultural use; we grew and farmed more hay for horses. We split the total amount of hay produced on this property, approximately 40, 4-5ft round bales and occasionally numerous square bales with Mrs. Barber.

6. Our interest in minimization of the sizes of the Residential Lots is directly related to our agricultural operations. The more the Lots are minimized, the greater will be our opportunity to use what is left of the abutting 30 acres for agricultural purposes.

7. When this matter came before the Board on May 26, 2011, the Staff Report began by advising the Board that, in light of the Circuit Court remand order, the Board's hearing should be limited to specifying the conditions of Plan approval.

8. Pointing to this, my counsel advised me that I would not be allowed to present evidence or expert opinion to the Board in an effort to get the Board to deny the application on the basis that the Residential Lots could be made smaller. With the Court decision and the remand order, he explained, there would be no "second bit at the apple" unless the remand order was modified, which I have directed him to seek.

9. But for this advice, I would have asked Dr. Brian Reed to again testify in this case. Dr. Reed, with multiple engineering degrees, had testified in the first hearing on this matter that the lot sizes could be reduced significantly. Dr. Reed's testimony was relied upon by the Board in defending denial of the Plan in the courts. I believe Dr. Reed could have readily explained that the critique of his testimony in the unreported opinion of the Court of Special Appeals (page 31) was incorrect.

10. Acting on advice of counsel, I did not engage Dr. Reed; I told others opposing the Plan not to bother coming to the hearing to oppose the Plan; and I refrained in my testimony from addressing the issue of whether the lot sizes were adequately minimized.

11. After the part of the May 26th proceedings devoted to public comment, my counsel had to leave for another hearing. During further colloquy by the Board with the Staff after he left, I was astounded to see Staff produce a new drawing, not disclosed or discussed in

the Staff Report, showing one way in which, as Dr. Reed had all along maintained, the sizes of some of the Residential Lots could be reduced further.

12. The example shown in the Staff drawing reduced lots 6 and 7 considerably to create what staff described as "orphan parcel" of about 5 acres, shown in yellow. Staff characterized the yellow parcel as having "almost nil agricultural benefit," and argued that it was preferable for this orphan to be included in lots 6 and 7 to ensure that it was owned, maintained and taxed.

13. I was greatly upset by this new, post-hearing "evidence" about which I had no notice or opportunity to comment on, but kept respectfully silent. I did not know how to object or if I could. If the Staff drawing and the Staff's arguments had been disclosed any earlier in the process, I would have testified that there was no "orphan" danger whatsoever; the "orphan parcel" is immediately adjacent to my property and I would have welcomed the opportunity to own, maintain and pay taxes on it. It's agricultural potential is not "nil;" it is abundant.

14. As frustrating as it was to have to sit silently in the audience while Staff's speculations went unchallenged, my frustration grew even deeper toward the end of the proceedings when Commissioner Dreyfuss asked about deciding this case on the merits alone, rather than on the basis of a court order. When Board counsel agreed that there was nothing to stop the Board from deciding the case on the merits as if there were no court order, the Chair took exception, stating as follows (at 2:03:30 of the video):

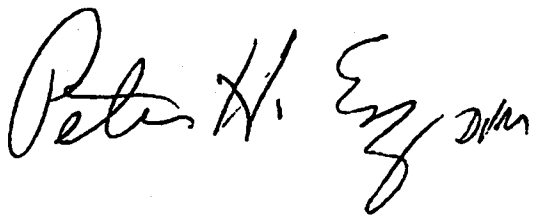
> Except that we didn't notice this that that's what we're doing and we didn't give anybody the opportunity to comment on the merits of the case. So I'm not sure I'm comfortable going that far.

15. If Reconsideration is granted, I will provide the Board greater detail on my prior agricultural use of the "orphan parcel" and more, as well as specifics on the terms under which I

can reasonably expect to own or lease such land from the Roches, who currently operate Hilltop Farm and with whom I have discussed the possibility of purchasing all or part of the acreage in question to add to my farming operation when they take ownership of the farm. The ability to do this would allow the Roches to keep all the acreage they are currently using to support barn two and provide me the opportunity to improve my hay farming annual yield. At the time of any reconsideration hearing, I believe the Roches will be ready, willing and able to consummate such a deal with me.

16. Lastly let me say how greatly disappointed I am that for the last 5 years this very productive agricultural land on the north end of Hilltop Farm has been left fallow. Staff clearly did not have any understanding of the former and future farming potential of this land. They seem to have lost sight of the great need to maximize agricultural protection in this area of the Montgomery County, Maryland.

I, Peter H. Eeg, declare under the penalty of perjury that the foregoing is true and correct. Executed on July 8, 2011.



Peter H. Eeg. DVM

ALLAN A. NOBLE
MICHAEL J. BUDOW
RICHARD E. SCHIMEL
WALTER E. GILLCRIST, JR
ANNE KELLEY HOWARD
J. CHARLES SZCZESNY
LAURA BASEM JACOBS
MELISSA D. MCNAIR
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July 8, 2011

Francoise M. Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
MCP-Chair@mncppc-mc.org

RE: Preliminary Plan No. 120050740, Hilltop Farms Limited Partnership
Petition/Motion for Reconsideration

Dear Chair Carrier:

Please accept this letter as a Petition/Motion for Reconsideration on behalf of the Boyds Civic Association, Katheryn Noble and the undersigned, on the Board's Resolution dated June 28, 2011. In addition to all the other matters that we have raised in our previous correspondence and filings and/or filings from David Brown, counsel for the Eegs and the Cinques, there has been a significant development in the case of the *Frank J. Roach Amended Trust v. Hilltop Farms, LP*, Civil Number 278450-V in the Circuit Court for Montgomery County (hereinafter *Roach v. Hilltop*). To help with your review in this matter, we enclose the following, to be filed for the record:

1. Plaintiff's Motion to Enforce Settlement Agreement in *Roach v. Hilltop*.
2. CD of the oral argument in *Roach v. Hilltop* before the Honorable Durke Thompson on June 9, 2011.
3. Order of Court dated June 28, 2011 in *Roach v. Hilltop* granting Motion to Enforce.
4. Page 34 from the Court of Special Appeals Decision in the case of *Montgomery County Planning Board v. Hilltop Farms, LP* Number 2511, September Term , 2008, filed August 12, 2010.

In *Roach v. Hilltop*, the Roach Trust has sued to enforce the contract of sale for 202 acres of the Hilltop property. Opponents to the Hilltop subdivision have long requested that Hilltop produce and file for the record a copy of the contract of sale and any agreements

between the Roach Trust and Hilltop. Hilltop has refused, and the Board and the staff have failed to require Hilltop to file this documentation for the record. Notwithstanding the failure of the staff and the Board to require the filing of this documentation, we now have conclusive evidence as generated in the *Roach v. Hilltop* litigation establishing that Hilltop does not have standing to pursue this subdivision.

The Roach Trust Motion to Enforce was heard before Judge Thompson on June 9, 2011. By Order dated June 28, 2011, Judge Thompson granted the Roach Trust's Motion to Enforce Settlement Agreement and provided that if Hilltop Farms does not provide originally signed documents requested by the settlement agent within three days of the request for same, then a trustee is to be appointed to execute all documents necessary to effectuate settlement and convey a good, marketable, insurable and clear title and a deed which can be filed in the land records of Montgomery County, Maryland.

In typical fashion, Hilltop has sought to delay going to settlement on this property, forcing the Roach Trust to file its Motion. In keeping with this approach, at the hearing before Judge Thompson on June 9, Mr. Orens, counsel for Hilltop, requested that the hearing be postponed. This request was denied. At the hearing it came to light that by agreement, Hilltop was required to go to settlement no later than March 14, 2011. At the hearing it was represented (and is undisputed) that a Deed of Transfer was executed in September of 2008, but that it was being held in escrow. The consideration for the property in the amount of $600,000 has already been paid and is being held by the escrow agent. The Settlement Agreement, at the request of Hilltop, has been filed under seal with the Court. It is Hilltop that refuses to release a copy of this agreement because they know the terms contained therein are totally adverse to the position they are now taking in this subdivision process.

At the hearing, Mr. Orens admitted that Lot 8, for which a deed had already been executed back in September 2008, is part of the preliminary plan of the subdivision. Mr. Orens conceded that the preliminary plan requires "unity of title" because of the Rural Density Transfer Zone requirements. If that unity of title is severed, then Hilltop concedes it cannot go forward with the subdivision process, and would lose "6 lots." Under the contract or Settlement Agreement between the Roach Trust and Hilltop, the parties had to close on or before March 14, 2011. Hilltop has delayed because they know they must have unity of title in order to pursue this subdivision. Unfortunately for Hilltop, we now know they have already executed the deed. Therefore the transfer is a *fait accompli* - a done deal.

In the appeal to the Court of Special Appeals, I raised on behalf of my clients the argument of equitable conversion, arguing that this doctrine operated to divest Hilltop of standing to pursue the application. The Court of Special Appeals did not reach this issue (see Page 34 of the decision) because there was simply not enough evidence in the record for them to make a decision (caused by Hilltop's refusal to produce the contract and agreement). As the Court pointed out,

> The evidence, such as it is, in the record consists of copies of a Complaint filed by Roach against Hilltop and Hilltop's First Amended Counterclaim...As the contract itself is not in the record, it is impossible for us to determine whether the contract could be enforced against Hilltop. Equitable conversion does not occur unless and until a contract is specifically enforceable.

Citing the case of *Coe v. Hayes*, 328 Md 350, 358 (1992).

Since we now know that a deed was executed in September of 2008, a fact of which Hilltop and its counsel has disingenuously failed to advise the Board, the staff, or the appeals courts, Hilltop cannot possibly pursue this application. Moreover, we now have a Court Order specifically mandating that the final documents (but not the deed, which has already been executed) be executed to consummate the final transfer.

The record now conclusively establishes that Hilltop has no standing to pursue this subdivision because it has already signed a deed transferring title to the Roach Trust. Because the contract has now been specifically enforced by the Court, Hilltop doesn't own this 202 acre parcel and has no standing to pursue this subdivision.

The residents of the Boyds community have long felt and argued that this "subdivision process" is a travesty and a sham. This is now confirmed by this new evidence. We implore the Board to see this for what it is - an illegal subdivision - and reopen the record, vacate its Order of June 28 and deny this application.

Respectfully submitted,

Allan A. Noble

AAN/vra
Enclosures

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

FRANK J. ROACH AMENDED TRUST, dated January 18, 2001	:	
Plaintiff,	:	
vs.	:	**Civil No.: 278450-V**
HILLTOP FARMS, L.P.	:	
Defendant.	:	

ORDER

UPON CONSIDERATION of Plaintiff's Motion to Enforce Settlement Agreement, and any Opposition thereto, good cause having been shown by the plaintiff, it is this 28th day of June 2011, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the Motion to Enforce Settlement Agreement be and the same is hereby GRANTED in favor of the plaintiffs; and it is further

ORDERED, that the Defendant is Ordered to comply with the specific terms and conditions of the Settlement Agreement executed by the plaintiff and defendant, that the Defendant is Ordered and required to close on the transaction conveying Parcel P400 to the Roach Trust; and, it is further,

ORDERED, that the defendant is required to execute all documents necessary to complete the transaction transferring Parcel P400 to the Roach Trust and all documents requested by the Escrow Agent and Real Estate Settlement Agent in order to convey good, marketable, insurable, and clear title, and a Deed which can be filed in the Land Records; and, it is further,

ORDERED, that the Escrow Agent shall release the fully executed Deed to Parcel P400 to the Settlement Agent so the transaction can be completed and upon the recordation of the Deed in the Land Records, the Escrow Agent shall disburse all accrued interest on the P400 Consideration to the Roach Trust; and, it is further,

ORDERED, that the defendants shall pay, pursuant to the Settlement Agreement terms, an award of attorneys fees, expenses and costs to the plaintiff associated with this enforcement action in the amount of to be determined upon further hearing; and, it is further,

ORDERED, that if Hilltop Farms does not provide originally signed documents of all documents requested by the Settlement Agent, Mark Simon, Esquire, within three (3) days of his request for the same, then Floyd Willis, Esquire is appointed as Trustee for Hilltop Farms, L.P. to execute all documents necessary to effectuate settlement and convey good, marketable, insurable and clear title, and a Deed which can be filed in the Land Records of Montgomery County.

John G. Thompson

JUDGE, Circuit Court for
Montgomery County, Maryland

Copies to:
ALL COUNSEL OF RECORD

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

FRANK J. ROACH AMENDED TRUST, dated January 18, 2001	:	
Plaintiff,	:	
vs.	:	**Civil No.: 278450-V**
HILLTOP FARMS, L.P.	:	
Defendant.	:	

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

COMES NOW the Plaintiff, FRANK J. ROACH AMENDED TRUST, dated January 18, 2001, (hereinafter "Roach Trust") by and through counsel, MICHAEL L. ROWAN, ESQUIRE, and ETHRIDGE, QUINN, KEMP, McAULIFFE, ROWAN & HARTINGER, and moves, pursuant to the Maryland Rules and the specific terms and conditions of the Settlement Agreement executed by the Roach Trust and Hilltop Farms, L.P. (hereinafter "Hilltop"), to specifically enforce the terms and conditions of the Settlement Agreement, to require the defendants to close on the transaction conveying Parcel P400 to the Roach Trust, require the Escrow Agent to release the fully executed Deed to Parcel P400, require the defendant to execute all documents necessary to complete the transaction transferring Parcel P400 to the Roach Trust and all documents requested by the Escrow Agent and Real Estate Settlement Agent to transfer good, marketable, insurable, and clear title for recordation purposes, for an award of attorneys fees and costs associated with this enforcement, and for such other and further relief as the Court deems just and proper, and as grounds therefore, states as follows:

1. The parties initially entered into a Lease and Purchase Agreement dated August 6, 2003, as amended, whereby the Roach Trust initially leased and then agreed to purchase real property located at 21800 Slidell Road, Boyds, Maryland, consisting of 202.08837 acres of land and identified as Parcel P400 which parcel is more particularly identified and described in a metes and bounds description recorded in Liber 12500 at Folio 638 in the Land Records of Montgomery County (hereinafter "Parcel P400").

2. When settlement on the Lease and Purchase Agreement was not completed and finalized, the Roach Trust filed a Complaint under this Case Number (278450-V) in the Circuit Court for Montgomery County, Maryland, and Hilltop filed a Counterclaim under the same case number.

3. Litigation ensued but the parties were able to reach a settlement, the terms and condition of which were specifically spelled out and reflected in a written Settlement Agreement, dated September 17, 2008. The parties amended the terms and conditions of the Settlement Agreement and the Settlement Agreement was incorporated into a Consent Judgment of the Circuit Court including an Order that the parties are specifically required to comply with all of the terms and conditions of the Agreement.

4. Said Order is reflected at Docket Entry No. 44 and the Agreement of the Parties, and Amendments thereto, were filed under seal with the Court.

5. The Settlement Agreement required Hilltop to sell Parcel P400 to the Roach Trust for a specific price, but referred to Hilltop's attempts at subdividing its separate parcel (Parcel P115) of land into a seven (7) lot subdivision. These attempts by Hilltop had initially been denied by the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission. Hilltop desired to pursue judicial review of such

decision, and the parties agreed on a specific, finite period of time within which the Roach Trust's settlement proceeds, which were paid to the Escrow Agent at that time per the Agreement, and Deed and all other necessary documents signing over Parcel P 400 to the Roach Trust which were similarly required to be provided to the Escrow Agent, would be held in escrow for Hilltop to pursue approval of this seven lot subdivision.

6. The Agreement between the parties further specified that at the conclusion of that specific, finite period of time, the Escrow Agent was to: 1) release the Deed to Parcel P400 to the Roach Trust, who was specifically authorized to record the Deed in the Land Records for Montgomery County; and to 2) disburse the agreed consideration held by the Escrow Agent to Hilltop, with all taxes, costs and expenses to be divided as specified in the Agreement such that the sale was completed. Hilltop was further required to execute all documents required by the Escrow Agent and Settlement Agent to effectuate proper transfer of the title and deed to the Roach trust.

7. The Roach Trust is requesting in this Motion that the Court Lift the Seal on the Settlement Agreement so the Court may consider the terms and conditions of the Settlement Agreement in this Motion to Enforce. The parties contemplated the same by including a specific clause in the Settlement Agreement "that the sole and exclusive method of enforcing this Agreement shall be by filing a motion to enforce the Agreement in the Litigation." Hence, the plaintiff believes the Court needs to Lift the Seal to consider the Agreement terms and allow the parties to argue regarding the terms and conditions of the same in open court.

8. Regarding the issues at hand in this Motion, the Agreement states that at

the time of the execution of the Settlement Agreement, Hilltop was to execute and deliver to the Escrow Agent a special warranty deed conveying legal title to the 202.08837 acres of land, more or less, identified as Parcel P400 to the Roach Trust to be held in Escrow as called for in the Agreement. (See Clause 2a of the Settlement Agreement). Hilltop further promised to cooperate and assist the Roach Trust to effectuate the recordation of the Deed, with clear title, among the Land Records of Montgomery County, including, but not limited to, the execution of any documents or instruments or providing information required to record the said deed and as may be needed to convey clear title to Parcel P400. (See Clause 2c of the Settlement Agreement).

9. The Agreement further states that at the time of the execution of the Settlement Agreement, the Roach Trust was to deposit in escrow with the Escrow Agent the amount of Six Hundred Six Thousand Two Hundred Seventy Five Dollars and Eleven Cents ($606,275.11), which sum was the agreed consideration to be paid by the Roach Trust to Hilltop in accord with the Lease and Purchase Agreement of August 6, 2003, as amended (the Parcel P400 Consideration). The Escrow Agent was to deposit these monies in interest bearing accounts. Upon recordation in the Land Records of the special warranty deed conveying Parcel P400 to the Roach Trust, and after paying this agreed lump sum amount of consideration to Hilltop, the Escrow Agent is required to disburse all of the accrued interest on the Parcel P400 Consideration to the Roach Trust. (See Clause 2b of the Settlement Agreement).

10. The Roach Trust made the required payment of Six Hundred Six

Thousand Two Hundred Seventy Five Dollars and Eleven Cents ($606,275.11) to the Escrow Agent per the Settlement Agreement and the monies have remained with the Escrow Agent since that deposit.

11. The Escrow Agent agreed by the parties is Carson Mills, Esquire of Lawyers Title Insurance Corporation. (See Clause 2e of the Settlement Agreement).

12. The exchange of the Deed and necessary documents, on the one hand, and the Parcel P400 Consideration, on the other, was to occur pursuant to a specific timeline spelled out by the parties in the Settlement Agreement.

13. The Agreement, as previously noted, took into account Hilltop's attempts at subdividing the remaining parcel. The Agreement, on the timing issue, states the deed conveying Parcel P400 and the Parcel P400 Consideration shall be held in Escrow by the Escrow Agent (Carson Mills, Esquire) *until the earlier of 36 months from the date of mailing* ("The Date of Mailing") of the Resolution of the Montgomery County Planning Board denying the Preliminary Plan Application , *being March 14, 2008, or the date of the final decision of the Maryland State Court* on an action instituted by Hilltop for judicial review of the said Resolution (hereafter "Escrow Period") identified as Case no. 294120-V in the Circuit Court for Montgomery County, Maryland. Promptly following the expiration of the Escrow Period the Escrow Agent shall, without further instruction, release the aforesaid deed to the Roach Trust and disburse the Parcel P400 consideration to Hilltop. Upon release of the aforesaid executed Deed to the Roach Trust, the Trust is authorized to record the Deed among the Land Records of Montgomery County with the taxes, costs and expenses of settlement as apportioned per the Agreement. The Roach Trust agreed to pay its portion of the taxes, costs and expenses prior to the Deed being recorded. The parties further specifically agreed to

execute a HUD-1 provided by the Settlement Agent, and Hilltop agreed to cooperate with the recordation of the Deed, with clear title, and to execute all documents necessary to record the deed and convey clear title to the Roach Trust. (See Clause 2c of the Settlement Agreement, emphasis added).

14. The Settlement Agent was agreed by the parties to be Mark Simon, Esquire, of Village Settlements, Inc.

15. Given the language agreed above, the exchange of the Deed and all necessary documents to record and convey clear title, on the one hand, and the Parcel P400 consideration, on the other hand, was to occur promptly, without further instruction, on March 14, 2011 (36 months or three years from March 14, 2008, the identified Date of Mailing). Moreover, while the agreement stated it was the earlier of the two dates, the only other trigger date for the exchange to occur was the date of the final decision by a Maryland state court, which date was March 30, 2011. (See Docket Entries for Civil 294120-V).

16. Despite the clear language and obligation owed, and despite demand for the exchange of documents and consideration, Hilltop refused to cooperate and complete the exchange.

17. As a sign of its good faith efforts to resolve the dispute at hand in this Motion, prior counsel for the Roach Trust, William Chen, Jr., Esquire, by correspondence of March 17, 2011, to counsel for Hilltop, extended the deadline for Hilltop to take all steps necessary for the release of the Deed and the closing to occur to March 30, 2011, provided that all necessary documents for the Deed to be released, the Deed to be recorded and clear title to be conveyed were in the possession of the Settlement Agent, Mark Simon, Esquire, by March 30, 2011. (See attached correspondence from William Chen, Jr., Esquire, to Stephen J.

Orens, Esquire, dated March 17, 2011). Mr. Simon sent correspondence on March 16, 2011, stating specifically what was needed from Hilltop. (See attached correspondence from Mark Simon, Esquire, dated March 16, 2011).

18. To date, Hilltop still has not provided the necessary documentation to the Settlement Agent. While the Settlement Agent can obtain the Deed from the Escrow Agent and exchange that for the Parcel P400 consideration, the Deed can not be recorded in the Land Records for Montgomery County, and clear title can not be conveyed, with title insurance, to the Roach Trust, without the original documents requested by Mr. Simon, executed by Hilltop, in possession of the Settlement Agent.

19. Hilltop has simply refused to provide the necessary documents such that the transaction can be completed and the Roach Trust can own the property it agreed to purchase almost eight (8) years ago, and the same property it paid for by payment to the Escrow Agent over three (3) years ago. Hilltop clearly desires to avoid, and refuses to take the necessary steps, to complete the settlement.

20. The Roach Trust has complied with all of its obligations under the Settlement Agreement to complete the exchange, has signed all the documents it has been requested by the Settlement Agent to sign, and has provided them to the Settlement Agent (the only document not signed by the Roach Trust is the HUD-1 which they stand willing to sign at the time of exchange and will similarly pay the closing costs at that time, but such document can be signed until the transaction is complete).

21. Moreover, the Roach Trust has not breached any obligation or condition of the Settlement Agreement, and has provided more than reasonable notice to and opportunities for Hilltop to comply with its obligations under the Settlement Agreement.

22. The Roach Trust has now waited over seven (7) years for the settlement to be completed. The contract was signed in 2003. The Roach Trust was forced to pursue litigation, and eventually agreed to a settlement with Hilltop that gave Hilltop a maximum of three years from March 14, 2008, or until March 14, 2011, to complete the settlement. The Roach Trust even granted additional extensions all showing their good faith efforts. All such accommodations have been met with refusals to settle by Hilltop and never ending delays.

23. Frank Roach, the namesake of the Roach Trust is in poor health, having been diagnosed with cancer, and wants to see this transaction completed before his health continues to deteriorate.

24. The Settlement Agreement additionally provides that upon the recordation of the special warranty deed conveying Parcel P400 to the Roach Trust, the Escrow Agent shall disburse all of the accrued interest on the Parcel P400 consideration (the $606,275.11 paid in 2008) to the Roach Trust. As such, the Roach Trust has money tied up associated with the interest on the escrow monies

25. The Settlement Agreement further specifically states that if a Motion to Enforce the Settlement Agreement is filed, the prevailing party shall be entitled to an award of all costs and expenses incurred in such a proceeding including, but not limited to, an award of reasonable attorney fees. (See Clause 18 of the Settlement Agreement). The Roach Trust requests the Court award it attorneys, costs and expenses in an amount to be determined at the time of hearing.

WHEREFORE, the plaintiff, Frank J. Roach Amended Trust, dated January 18, 2001 requests the Court Order the defendant, Hilltop Farms, L.P., to comply with the specific terms and conditions of the Settlement Agreement executed by the plaintiff and

defendant, to specifically enforce the terms and conditions of the Settlement Agreement and to require the defendants to close on the transaction conveying Parcel P400 to the Roach Trust, require the defendant to execute all documents necessary to complete the transaction transferring Parcel P400 to the Roach Trust and all documents requested by the Escrow Agent and Real Estate Settlement Agent such that good, marketable, insurable and clear title for recordation purposes is conveyed, require the Escrow Agent to release the fully executed Deed to Parcel P400, require the Escrow Agent to disburse all of the accrued interest on the Parcel P400 Consideration after the recordation of the special warranty deed to the Roach Trust, Order an award of attorneys fees, expenses and costs to the plaintiff associated with this enforcement, and for such other and further relief as the Court deems just and proper.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING ARE TRUE AND CORRECT AND ARE BASED UPON MY PERSONAL KNOWLEDGE.

4/18/2011
Date

REBECCA ROACH, ANCILLARY TRUSTEE
FRANK J. ROACH AMENDED TRUST,
dated January 18, 2001

Respectfully submitted,

ETHRIDGE, QUINN, KEMP,
MCAULIFFE, ROWAN, &
HARTINGER

MICHAEL L. ROWAN, ESQUIRE
33 Wood Lane
Rockville, Maryland 20850
(301) 762-1696
Attorney for the Plaintiffs

REQUEST FOR A HEARING ON THE MOTION

Plaintiffs respectfully request a hearing on this motion.

MICHAEL L. ROWAN, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Enforce Settlement Agreement, along with Exhibits, was mailed, postage prepaid on this 19th day of April, 2011 to:

Stephen J. Orens, Esquire
Miles & Stockbridge
11 North Washington Street, Suite 700
Rockville, MD 20850
Attorney for the Defendants

MICHAEL L. ROWAN, ESQUIRE

goes, Hilltop could not create children's lots in excess of 1 acre, as the RDT regulations mandate a minimum lot size of 40,000 square feet.

In Part I (A) of this opinion, we adopted the construction of § 2B-11(c) suggested by the County Attorney. This conclusion renders moot the contentions raised by appellants that there is a meaningful distinction to be drawn between "grantor" and "child" lots in terms of the Planning Board's consideration of this application.

(3) Finally, Noble and the BCA argue that "it is undisputed that the Frank J. Roach Amended Trust [("Roach")] is the contract purchaser of the entire Hilltop property." Relying on *DeShields v. Broadwater*, 338 Md. 422, 437 (1995), these appellants argue that the doctrine of equitable conversion operates to divest Hilltop of standing to pursue the application. The issue in *DeShields* was whether the doctrine of equitable conversion protects a contract purchaser from imputed notice of a *lis pendens* of a competing claim to the property. 338 Md. at 428.

The evidence, such as it is, in the record consists of copies of a complaint filed by Roach against Hilltop and Hilltop's First Amended Counter Claim. Our reading of these documents does not lead us to the conclusion that Roach contracted with Hilltop to purchase the entire farm parcel but rather a portion of it. As the contract itself is not in the record, it is impossible for us to determine whether the contract could be enforced against Hilltop. Equitable conversion does not occur unless and until a contract is specifically enforceable. *Coe v. Hays*, 328 Md. 350, 358 (1992).

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

July 11, 2011

VIA ELECTRONIC MAIL TO: anoble@budownoble.com
VIA REGULAR MAIL

Allan A. Noble Esquire
Budow and Noble, P.C.
Air Rights Center
7315 Wisconsin Ave.
Ste. 500 West
Bethesda, MD 20814

Re: Preliminary Plan No.120050740 –Motion for Reconsideration- Board Rules of Procedure

Dear Mr. Noble:

Earlier today we received a service copy of a Motion for Reconsideration filed by Knopf and Brown in the above captioned matter. Upon review, we learned that a similar motion had been filed by you and we obtained a copy of your motion from the Office of General Counsel of the Maryland-National Capital Park & Planning Commission that was dated and received on July 8, 2011. As of today, July 11, 2011, we have not received a service copy and your submission does not include a certificate of service.

Your attention is directed to the following requirement of Rule 4.121 of the Montgomery County Planning Board's Rules of Procedure:

> "Any Party (including the Planning Director) who requests reconsideration **must** serve a copy of its petition on every other party."

It would be appreciated if, in the future, when you correspond with the Planning Board regarding this matter that you extend us the courtesy of providing us with a copy of that submission.

Very truly yours,

Stephen J. Orens

cc: The Honorable Francoise Carrier, Chair
Carol Rubin, Esquire
David Lieb, Esquire
Hilltop Farms LP
Rebecca D Walker, Esquire

Client Documents 4822-7208-6026v1|18795-000001|7/11/2011

MCP-CTRACK

From: Kaufman, Connie [ckaufman@MilesStockbridge.com]
Sent: Monday, July 11, 2011 4:52 PM
To: 'anoble@budownoble.com'
Cc: MCP-Chair; Rubin, Carol; Lieb, David; 'Sam Faller'; Walker, Rebecca D.
Subject: Preliminary Plan No. 120050740- Motion for Reconsideration - Board Rules of Procedure
Attachments: Orens ltr to Noble 7-11-11.PDF

Sent on behalf of Stephen J. Orens, Esq.

MILES & STOCKBRIDGE P.C.
Connie Kaufman
Legal Secretary
Direct Dial: 301.517.4841
Fax: 301.762.0363
ckaufman@milesstockbridge.com
11 North Washington St., Ste. 700, Rockville, MD 20850-4286
www.milesstockbridge.com

Secure Upload/Download files click here.

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

July 13, 2011

VIA ELECTRONIC MAIL
VIA REGULAR MAIL

The Honorable Francoise Carrier, Chair
The Montgomery County Planning Board
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan No 120050740 – Hilltop Farms – Response to Boyds Civic Association, *et. al.* Request for Reconsideration

Dear Madame Chair:

On July 8, 2011, Allan Noble, Esquire submitted a request for Reconsideration on behalf of the Boyds Civic Association and Katherine Noble contending that Hilltop Farms Limited Partnership ("Hilltop") does not have standing to pursue this subdivision. In support of that contention, Mr. Noble again asserts that litigation settled by a Consent Order and Settlement agreement in 2008 operates to divest Hilltop Farms of its right to seek a subdivision of its own property. The current iteration of this previously argued claim is founded on a court proceeding regarding one of several motions filed by both parties to that litigation each seeking to enforce the Consent Order. Mr. Noble erroneously states in his reconsideration request that "the Roach Trust sued to enforce the contract of Sale." (Reconsideration letter page (1.) Mr. Noble has mischaracterized what was before the court in June, has ignored that which is pending before the court now and, once again, seeks to drag into the record a matter that has no relevance to the issues that this Board can decide in a subdivision case.

The court motion to which Mr. Noble referred in his reconsideration request is one of several filed in the case captioned *Frank J. Roach Amended Trust v. Hilltop farms LP*, Civil No. 278450-V (the "Roach Litigation"). What actually occurred when the court heard argument of counsel on June 9, 2011 was that the Court declined to rule until June 17th upon learning that the Planning Board had granted the subdivision application and would approve its formal resolution on June 16th. We do not speculate as to why the Judge declined to take action on the 9th.

What Mr. Noble characterizes as a motion for specific performance of a contract was not, in fact, a motion for specific performance. The Roach litigation arose out of counter claims alleging breach of contract. The agreement that settled that litigation, placed under seal by the **mutual request of both Roach and Hilltop**, established a specific process to enforce the Consent Order and one of the motions filed in that case by the Roach Trust was heard in June. The motions filed by Hilltop have not yet been argued.

The Court order to which Mr. Noble refers required that certain documents be delivered to the Settlement Attorney identified in the Settlement Agreement and Consent Order and, although it is of no relevance to the Board's approval of the Preliminary Plan, we point out that all of the documents that were requested by the Settlement Attorney were, in fact, delivered to Village Settlements on June 16, 2011.

Mr. Noble also claims that the placement of documents and funds in escrow under a sealed settlement agreement and Consent Order, to which Roach and Hilltop agreed, divests Hilltop of standing to pursue the subdivision. The placement of documents and funds in escrow is a means of preserving the *status quo* until the occurrence of a specified event, in this case completion of the preliminary plan approval process. Furthermore, Hilltop could have legally sold the property and conveyed it to the Roach Trust at any time and continued with the subdivision by adding the Roach Trust as a co-applicant.

Mr. Noble disingenuously contends that "in typical fashion" Hilltop sought to delay the closing of the contract that was subject to the Consent Order (a contract in which neither Mr. Noble nor his clients have any interest) and by agreement had between the parties to the contract been deferred for over three years in order to allow the judicial review process to run its course.

Mr. Noble's oft presented contention that Hilltop Farms was somehow obligated to "produce" a third party contract before this Board or the Court, or to provide Mr. Noble copies of a contract to which neither Mr. Noble nor his clients were privy, is erroneous as a matter of law. In any event, it was previously argued before this Board and rejected, and again argued and rejected three times before the courts. That rejected argument cannot be argued again under both the issue preclusion doctrine and the law of the case rule.

Mr. Noble's reconsideration request is without merit and should not be granted. In fact under Board Rule 4.12.1 it should not even be considered since the only "other Party" to whom Mr. Noble provided service was the other opponents, represented by attorney David Brown. (See letter to Allan Noble dated July 11, 2011, a copy of which was previously provided to the Chair).

Sincerely,

Stephen J. Orens

cc: Carol Rubin, Esquire Associate General Counsel
David Lieb, Esquire, Associate General Counsel
Richard A. Weaver, Supervisor, Planning Area 3
Allan Noble, Esquire
David Brown, Esquire
Hilltop Farms LP
Rebecca D. Walker, Esquire

MILES & STOCKBRIDGE P.C.
Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

July 14, 2011

VIA ELECTRONIC MAIL
VIA REGULAR MAIL

The Honorable Francoise Carrier, Chair
The Montgomery County Planning Board
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan No 120050740 – Hilltop Farms – Response to Request for Reconsideration submitted on behalf of Dr. and Mrs. Eeg and Mr. and Mrs. Cinque

Dear Madame Chair:

The Applicant, Hilltop Farms Limited Partnership ("Hilltop Farms") opposes the Request for Reconsideration submitted by attorney David Brown on behalf of the above identified individuals. Dr. and Mrs. Eeg and Mr. and Mrs. Cinque ("Eeg/Cinque") justify their reconsideration request by asserting that they were denied a "full and fair hearing" by the Planning Board on May 26, 2011 when the Board conducted a hearing for the limited purpose of determining what approval conditions were appropriate; and that such denial constituted a denial of procedural due process. The focus of the Eeg/Cinque reconsideration request is that they were denied the opportunity to address "whether the clustered lots approved by the (Planning Board's) Resolution have been minimized in size to the extent reasonably possible." (Request for Reconsideration, page 1.)

Conceding that they presented no evidence at the May 26th hearing directed at lot size minimization because that issue was not before the Board, Eeg/Cinque proceed to contend that they were not permitted to comment on "an elaborate exercise" by staff:

> "detailing how, after over five years of insistence that lot size had been minimized, and after the parties had expended tens of thousands of dollars of appellate litigation over this very point **the lots could in fact be reduced further in size"** (Emphasis in original) (Request for Reconsideration page 3.)

The Staff discussion to which the Eeg/Cinque reconsideration request refers was a response by Planning Area 3 Supervisor Richard A. Weaver to a question by Commissioner Dreyfus during the Board's deliberations. In his response to

Commissioner Dreyfus, Mr. Weaver referred to a sketch that he had previously prepared for his own analysis. That sketch included a hypothetical reduction in the size of the lot bordering Dr. Eeg's property. Mr. Weaver explained why creating what he called an "orphan parcel" between proposed "Lot 7" and Dr. Eeg's property merely to artificially reduce the size of this particular lot did not promote and could not become part of the existing equine operation. According to Mr. Weaver, the resulting lot configuration would, in fact, detract from the subdivision. It was Mr. Weaver's observation at the hearing that "We (meaning the staff and the Board) could make some really ugly lots here if we wanted to." He went on to recommend that the Board resist approving lots that were inappropriate for the location. (Hearing time at 1.50 to 1.56)

It is abundantly clear from the testimony and comments by David Brown, Esquire, Dr. Eeg's counsel, at the May 26th hearing that Mr. Brown had ample opportunity to present his lot size minimization issue before the Board on May 26th. Also, the characterization in the reconsideration request that Mr. Weaver's sketch illustrated that "the lots could in fact be reduced further in size" is erroneous because Mr. Weaver used that sketch to illustrate the opposite when he responded to Commissioner Dreyfus' question, and Mr. Weaver's discussion with Commissioner Dreyfus were neither a denial of procedural due process nor a denial of a fair hearing. Board members are entitled to question staff during their deliberations before making a decision and Staff is obligated to respond. Every attorney practicing before the Planning Board has at one time or another wanted to participate in the Board's deliberations. We are not entitled to do so. We are entitled to observe and listen but not participate unless expressly invited to do so, and no Maryland appellate court decision has ever extended to the participants in an administrative hearing the right to participate in the agency's deliberation.

Contrary to what is stated on page 6 of the Eeg/Cinque reconsideration request there is no language in MCPB Resolution 11-48 that even suggests that "the board concluded that the lot minimization issue could be considered anew."

In an interesting, albeit legally inaccurate statement on page 6 and in the accompanying footnote (footnote 1), the Eeg/Cinque reconsideration request suggests that, but for the remand order, the Board's current findings would constitute an impermissible "mere change of mind." The cases cited in the footnote are inapplicable because the Maryland Courts have decided this case; the Court of Appeals has rejected the Eeg/Cinque Petition for a Writ of Certiorari and the Court of Special Appeals dismissed the Eeg/Cinque appeal of the propriety of the language in the Remand Order.

The Eeg/Cinque reconsideration request now before the Planning Board states that "This Petition is supported by the affidavit of Dr. Eeg." Included in Dr. Eeg's affidavit is the following stunning admission:

> "6. Our interest in minimization of the sizes of the Residential Lots is directly related to our agricultural operation. The more the Lots are minimized, the greater will be our opportunity to use what is left of the abutting 30 acres for agricultural purposes."

Of course, Dr. Eeg does not own or have any legal interest in "the abutting 30 acres." In paragraph 15 of his affidavit, Dr. Eeg explains his motivation for aggressively pursuing a lot size reduction and, perhaps inadvertently, his motive for requesting that the Planning Board delay its May 26th hearing. In paragraph 15 of his affidavit, Dr. Eeg states, under the penalty of perjury, that:

> "If reconsideration is granted, I will provide the Board greater detail on my prior agricultural use of the "orphan parcel" and more, **as well as specifics on the terms under which I can reasonably expect to own or lease such land from the Roaches,** who currently operate Hilltop Farm and with whom I have discussed the possibility of purchasing all or part of the acreage in question to add to my farming operation when they take ownership of the farm. (Emphasis added.)

Yet, when Dr. Eeg testified before the Planning Board on May 26, 2011, he stated that, although he was "veterinarian of record" for the Roach's "Moon Rising Farm" the person he identified as the operator of Moon Rising Farm (Rebecca Roach) had instructed him that "I am not allowed to ask anything or talk to them in any way" about the subdivision[1] and that he had to restrict his conversations with Ms. Roach to veterinary matters. That testimony is directly contradicted by the statement in Dr. Eeg's Affidavit that he had "discussed the possibility of purchasing all or part of the acreage in question to add to my farming operation when they take ownership of the farm." The "they" to whom Dr. Eeg referred is the Roach Trust.

The various tactics employed by the Eeg/Cinque opponents include attempting to delay the Planning Board's Court mandated consideration of conditions applicable to the approved preliminary plan in furtherance of Dr. Eeg's coveting the thirty acres intended for the seven approved lots. That thirty acre portion of the Hilltop Farms' Property is the acreage to which Dr. Eeg referred in his affidavit as "all or part of the acreage in question (that he plans) to add to my farming operation when they (meaning the Roach family) take ownership of the farm."

It is clear to us from Dr. Eeg's affidavit and the documents identified below that each attempt to delay the May 26th hearing, first by asserting that this Board

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[1] Planning Board hearing testimony is identified by the time clock on the attached DVD as: "0:00:00" the quoted testimony appears at 1:05:4.1

lacked jurisdiction to conduct a hearing because an appeal[2] of the Remand Order had been filed with the Court of Special Appeals; then by the last minute claim that the Department of Natural Resources ("Md-DNR") was going to investigate the alleged location of an endangered turtle species habitat on the Subject Property; and now by this Request for Reconsideration was part of a concerted effort to force Hilltop Farms to sell "the abutting 30 acres" to the Roach Trust so that Dr. Eeg could then buy that property from the Roach family.

As noted above, the Request for Reconsideration states that it is "supported by the affidavit of Dr. Eeg." (Reconsideration Request page 1.) Dr. Eeg's affidavit must be evaluated in the context of his testimony before this Board on May 26, 2011, and electronic documentation that was obtained from the Maryland Department of Natural Resources under the Maryland Public Information Act ("MPIA"), all of which contradict Dr. Eeg's testimony to the Planning Board.

When Dr. Eeg testified before this Board on May 26, 2011 he claimed that the turtle, identified by him as a "Bog Turtle" had been brought to him by "a farm hand." Specifically, Dr. Eeg testified that "one of the farm hands had been out in the field working and mowing and hit a turtle and he brought the turtle up"[3] for him to treat. To the contrary, it was Rebecca Roach who found the turtle. On March 7, 2011 at 1:18 PM, Rebecca Roach sent an e-mail to "customer service" at Md-DNR in which she stated:

> "Hi,
> I found what I thought was a bog turtle on my farm in Boyds which is in upper Montgomery County and took pictures. **I sent those pictures to Peter Pritchard who I understand is a turtle expert.** He identified it as a bog turtle and since I have found many others. I understand that they are Federally (*sic*) protected and are not common in my County. Is this correct? I was wondering what I can do to maintain a healthy habitat for them so that they can thrive? Thanks! Rebecca Roach Moon Rising Farm 301-540-3703"
> (**Exhibit 1.** Emphasis added.)

That e-mail to Md-DNR's Customer Service was routed to Scott A. Smith at Md-DNR on March 9, 2011. According to Dr. Smith, this email from Ms. Roach was the first received. Following our MPIA request, we are advised by Dr. Smith that:

> "Photos were eventually sent to me from her (Ms. Roach) that were of a spotted turtle that she was calling a bog turtle. I deleted

[2] The frivolous appeal to the court of Special Appeals was dismissed by that Court on July 8, 2011 following a Motion to Dismiss filed by Hilltop Farms. The appeal was dismissed on the basis that it was not allowed by either the Maryland Rules of Procedure or by any law.
[3] Time clock at 1:11:26.

> them quite some time ago (the photos and my response) **as I did not know at the time they were associated with an effort to stop a proposed development activity.**" (**Exhibit 1** emphasis added.)

Peter Prichard, the person identified by Ms. Roach in her March 9 e-mail to Md-DNR as "a turtle expert" is the same person identified by Dr. Eeg at the Planning Board hearing as having provided what was alleged to be an e-mail confirming that the turtle in the picture was a "Bog Turtle." Specifically, Dr. Eeg testified[4] that he "got verification from the worlds most renowned expert Peter Pritchard who I worked with on one occasion." According to an email to Mr. Smith at Md-DNR from Cynthia Eeg, the person that Ms. Roach "understood" was a turtle expert and who Dr. Eeg represented to this Board as an uninterested expert was Ms. Eeg's "personal friend." Ms. Eeg's May 19, 2011 e-mail to Dr. Smith at Md-DNR states:

> Hi Scott,
> My name is Cindy Eeg and **I am a neighbor of Rebecca Roach** and have just received notice that there is a hearing next week, May 26, regarding developing some of the property near the turtles. I did not know if this was something you would be interested in but I believe they are planning to place a septic system through the stream where the turtles live. Let me know if there is anything I can do to assist or any additional information I can provide. I can be reached at either this email address or 301-916-0144. **In addition, Peter Pritchard is a personal friend of mine and I would be happy to put you in direct contact with him if needed.** Thank you in advance for your prompt attention to this matter. Sincerely, Cindy Eeg
> (**Exhibit 2** emphasis added.)

One can infer from Ms. Eeg's May 19th e-mail to Scott Smith that it was Ms. Eeg who directed Rebecca Roach to Peter Pritchard and that when Dr. Eeg sought to validate his erroneous identification of the turtle in the power point picture at the Planning Board hearing, based on Mr. Prichard's "world renowned expertise," he failed to disclose, in addition to the date of the so-called e-mail from Mr. Prichard, that Ms. Eeg and Mr. Pritchard were in fact "personal friends."

Dr. Eeg testified to this Board on May 26, 2011 that the turtle in the picture in his power point "actually is a bog turtle a threatened species" and that he had contacted DNR repeatedly but "they have not had time to come out and evaluate the area." [5] Dr. Eeg knew or should have known that his testimony was inaccurate. On May 24, 2011, two days prior to his Planning Board testimony,

[4] Time clock @ 1:12:51
[5] Time Clock @ 1:12:32

Dr. and Mrs. Eeg, their attorney, and others representing the opposition to the Hilltop Farms Plan received the following e-mail from Scott Smith at Md-DNR:

> "I have been in the field, where I am now, conducting surveys on bog turtles and terrapins. **The photos sent to me earlier this year were not bog turtles; they were spotted turtles.** While I am very aware of Dr. Pritchard's acumen, I have been working closely with bog turtles in Maryland for 19 years. They are only known to occur in Baltimore, Carroll, Cecil, and Harford counties. Over the years I have investigated "sightings" of bog turtles in Howard, Montgomery, and Frederick counties and they have all turned out to be spotted turtles. **While I understand the desire to protect wildlife habitat from development, it has been an integral part of my job, I and DNR need credible evidence to do so."** (**Exhibit 3** emphasis added.)

It is not possible to reconcile that which Dr. Eeg knew or should have known following the May 24, 2011 from Scott Smith at Md-DNR and his testimony on May 26, 2011 that the turtle in his power point picture "actually is a bog turtle a threatened species." When Dr. Eeg testified that he had contacted DNR repeatedly but "they have not had time to come out and evaluate the area" he knew or should have known that there was no basis for that statement. It was beyond disingenuous for Dr. Eeg to ask the Planning Board to "defer this action" and set a new hearing later this spring knowing what he knew in order to force Hilltop Farms into a default under the Consent Order in the Roach Litigation leaving them no alternative but to sell the thirty acres intended for the Faller family's use to the Roach Trust at a distressed price so that he (Dr. Eeg) could then get that property for himself.

It is time to stop torturing the Faller family. This reconsideration request does not merit the Planning Board's consideration and has failed to present any new evidence worthy of consideration by the Board.

Sincerely,

Stephen J. Orens

cc: David Lieb, Esquire Associate General Counsel
Carol Rubin, Esquire Associate General Counsel
David Brown, Esquire
Allan Nobel, Esquire
Rebecca Walker, Esquire
Hilltop Farms LP

EXHIBIT
1

From: Smith, Scott A. <SASMITH@dnr.state.md.us>
Sent: Monday, June 27, 2011 4:04 PM
To: Walker, Rebecca D.
Subject: FW: Bog turtle

The original and first request from Ms. Roach. Photos were eventually sent to me from her that were of a spotted turtle that she was calling a bog turtle. I deleted them quite some time ago (the photos and my response) as I did not know at the time they were associated with an effort to stop a proposed development activity.

Scott A. Smith
Wildlife Diversity Ecologist
MD DNR - Natural Heritage Program
Wye Mills Field Office
PO Box 68
Wye Mills, MD 21679
410-827-8612 x103

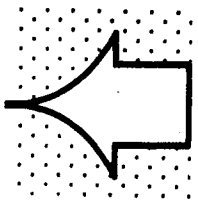
From: Spencer, Tracey
Sent: Wednesday, March 09, 2011 11:21 AM
To: Smith, Scott A.
Cc: Brewer, Gwenda L.; McKnight, Jonathan; Therres, Glenn; Peditto, Paul
Subject: FW: Bog turtle

Hi Scott,

Please provide me a response for the customer service inquiry below. Once you have completed the response, just click on "reply all" and I will take it from there.

Sincerely,
Tracey M. Spencer
Assistant to the Director,
Wildlife and Heritage Service
tspencer@dnr.state.md.us<mailto:tspencer@dnr.state.md.us>
Office: (410) 260-8564
Fax: (410) 260-8596

From: Rice, Barbara On Behalf Of Customer Service
Sent: Wednesday, March 09, 2011 9:57 AM
To: Spencer, Tracey
Subject: FW: Bog turtle



From: Rebecca Roach [mailto:moonrising@earthlink.net]
Sent: Monday, March 07, 2011 1:18 PM
To: Customer Service
Subject: Bog turtle

Hi.
I found what I thought was a bog turtle on my farm in Boyds which is in upper Montgomery County and took pictures. I sent those pictures to Peter Pritchard who I understand is a turtle expert. He identified it as a bog turtle and since I have

found many others. I understand that they are Federally protected and are not common in my County. Is this correct? I was wondering what I can do to maintain a healthy habitat for them so that they can thrive? Thanks!

Rebecca Roach
Moon Rising Farm
301-540-3703

EXHIBIT

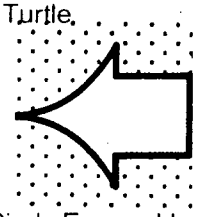
2

From: Smith, Scott A. <SASMITH@dnr.state.md.us>
Sent: Monday, June 27, 2011 4:03 PM
To: Walker, Rebecca D.
Subject: FW: Bog Turtle

This was not responded to.

Scott A. Smith
Wildlife Diversity Ecologist
MD DNR - Natural Heritage Program
Wye Mills Field Office
PO Box 68
Wye Mills, MD 21679
410-827-8612 x103

From: laserveteeg@netzero.net [laserveteeg@netzero.net]
Sent: Thursday, May 19, 2011 3:27 PM
To: Smith, Scott A.
Cc: laserveteeg@netzero.net
Subject: Bog Turtle



Hi Scott,

My name is Cindy Eeg and I am a neighbor of Rebecca Roach and have just received notice that there is a hearing next week, May 26, regarding developing some of the property near the turtles. I did not know if this was something you would be interested in but I believe they are planning to place a septic system through the stream where the turtles live. Let me know if there is anything I can do to assist or any additional information I can provide. I can be reached at either this email address or 301-916-0144. In addition, Peter Pritchard is a personal friend of mine and I would be happy to put you in direct contact with him if needed. Thank you in advance for your prompt attention to this matter.

Sincerely,

Cindy Eeg

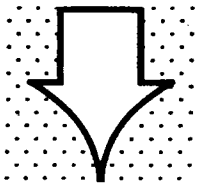
EXHIBIT
3

From: Smith, Scott A. <SASMITH@dnr.state.md.us>
Sent: Monday, June 27, 2011 4:01 PM
To: Walker, Rebecca D.
Subject: FW: Imminent Subdivision Approval will threaten Bog Turtle habitate in Mon tgomery County MD.

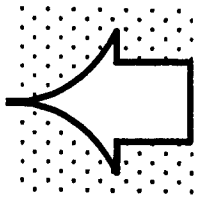
No response was sent on this one.

Scott A. Smith
Wildlife Diversity Ecologist
MD DNR - Natural Heritage Program
Wye Mills Field Office
PO Box 68
Wye Mills, MD 21679
410-827-8612 x103

From: laserveteeg@netzero.net [laserveteeg@netzero.net]
Sent: Tuesday, May 24, 2011 8:23 AM
To: Smith, Scott A.
Cc: laserveteeg@live.com
Subject: Re: Imminent Subdivision Approval will threaten Bog Turtle habitate in Mon tgomery County MD.



So what I am reading is that you do not find this in your interest to investigate before this area is compromised? Cindy



---------- Original Message ----------
From: "Smith, Scott A." <SASMITH@dnr.state.md.us>
To: "laserveteeg@netzero.net" <laserveteeg@netzero.net>
Cc: "brown@knopf-brown.com" <brown@knopf-brown.com>, "awalters@budownoble.com" <awalters@budownoble.com>, "laserveteeg@netzero.net" <laserveteeg@netzero.net>

Subject: Re: Imminent Subdivision Approval will threaten Bog Turtle habitate in Mon tgomery County MD.
Date: Tue, 24 May 2011 06:36:42 -0400

I have been in the field, where I am now, conducting surveys on bog turtles and terrapins. The photos sent to me earlier this year were not bog turtles; they were spotted turtles. While I am very aware of Dr. Pritchards acumen, I have been working closely with bog turtles in Maryland for 19 years. They are only known to occur in Baltimore, Carroll, Cecil, and Harford counties. Over the years I have investigated "sightings" of bog turtles in Howard, Montgomery, and Frederick counties and they have all turned out to be spotted turtles. While I understand the desire to protect wildlife habitat from development, it has been an integral part of my job, I and DNR need credible evidence to do so.

Regards,

Scott Smith, DNR Ecologist

Sent from my iPhone

On May 23, 2011, at 11:26 PM, "laserveteeg@netzero.net" <laserveteeg@netzero.net> wrote:

> Dear Dr. Smith,
> I and My wife have requested over the past few weeks communications with you regarding our confirmation via Dr. Peter Pritchard that a thriving Bog Turtle population exists on Moon Rising Farm (formerly Hill Top Farm)located at the south west corner of W. Old Baltimore Rd and Slidell Rd in Montgomery County Maryland. The Class I stream (Bucklodge Branch of Little Seneca) runs through our property to the habitat on Moon Rising Farm.

> We have as yet not received any communication with you and time is now of the essence. I will be testifying at the May 26th, 2011 hearing for a sub-division approval on this farm (See PDF file link below). Do you know of any State or Federal Statutes I can point to requireing review of this federally protected species before an approval is given? No conditions are in place in MNCPPC's approval recommendation for protection of the Bog Turtle habitat. The location of the sub-division and direct septic tank incursion into the habitat will be approved unless action can be taken to deffer the approval until a complete evaluation, review of environmental impact and mitigation plans proposed this sub-division will have on a highly threatened federally protected species. I will be calling your office tomorrow May 24th, 2011 to follow up on this e-mail. I would appreciate also your consideration to attend this subdivision approval hearing as I am sure you would like to weigh in on this issue to protect the potentially only Bog Turtle habitat in Montgomery county MD. the approval hearing will take place at MNCPPC offices at 9:00AM May 26th, 2011 in Silver Spring, MD.

> Thank you for your time, and efforts in protecting our critical habitats.
> Sincerely,
> Peter H. Eeg BSc, DVM, CVLF, ASLMS
> Please contact me at
> O 301-972-7705 (Ask receptionist to get me when you call)
> C 240-876-3562 (Call office 8:00 AM to 1:00PM and 3:00PM to 6:00PM)
> H 301-916-0144 (Mornings before 7:00 AM and Evenings after 8:00 PM)
> http://www.montgomeryplanningboard.org/agenda/2011/documents/20110526_Hilltop_Farms.pdf
>
> _____
> Groupon&#8482 Official Site
> 1 ridiculously huge coupon a day. Get 50-90% off your city's best!
> http://thirdpartyoffers.netzero.net/TGL3241/4ddb25496cd35d1fd9st02vuc

KNOPF & BROWN

401 E. Jefferson Street
Suite 206
Rockville, Maryland 20850
(301) 545-6100
Fax – (301) 545-6103

FACSIMILE TRANSMITTAL SHEET

TO: Christina for David FROM: 3| 495 2173

FAX #: TOTAL # PAGES (Incl. cover):

DATE:

NOTES/COMMENTS:

If you do not receive this transmission in its entirety please call Joy at (301) 545-6100.

Joy Johnson

From: Garcia, Joyce [Joyce.Garcia@mncppc-mc.org]
Sent: Wednesday, July 20, 2011 4:38 PM
To: Joy Johnson
Subject: Email Received This Afternoon Re: Hilltop Farm

Good Afternoon Ms. Johnson,

Due to technical problems, we are unable to open the email you sent to the Planning Board this afternoon regarding Hilltop Farm. Please fax the letter to the Board at 301-495-1320. I assume this letter was not related to the Board's meeting tomorrow as it was sent after the deadline for distribution to the Board.

Thank you.

Joyce P. Garcia
Special Assistant to the Montgomery County Planning Board
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
Phone: 301-495-4631
Fax: 301-495-1320

Joy Johnson

From: Joy Johnson [Joy@knopf-brown.com]
Sent: Wednesday, July 20, 2011 3:32 PM
To: 'MCP-Chair'
Cc: 'David W. Brown'; 'sorens@milesstockbridge.com'; 'anoble@budownoble.com'; 'Weaver, Richard'; 'David.Lieb@mncppc-mc.org'; 'laserveteeg@netzero.net'
Subject: Letter from David Brown re Preliminary Plan 120050740 - Hilltop Farm
Attachments: Ltr to Carrier re 120050740.pdf

Dear Chair Carrier,

Attached please find a letter with attachments from David Brown, in response to the July 14, 2011 letter from counsel for Hilltop Farms LP. Please place this letter in the permanent file and distribute it to all parties. *It is necessary for this letter to be distributed to all Boardmembers immediately as there is a strong possibility the matter will be on tomorrow's agenda.*

Please confirm receipt of this letter, and confirm its distribution.

Sincerely yours,

Joy Johnson
Office Administrator

KNOPF & BROWN
401 E. Jefferson Street
Suite 206
Rockville, MD 20850
Phone (301) 545-6100
Fax (301) 545-6103
lawfirm@knopf-brown.com

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DAVID W. BROWN

WRITER'S DIRECT DIAL
(301) 545-6105

July 20, 2011

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: **Preliminary Plan No. 120050740 – Hilltop Farms**

Dear Chair Carrier:

I write in response to the July 14, 2011 letter from counsel for Hilltop Farms LP ("Hilltop") in opposition to the Petition for Reconsideration I filed on behalf of Peter and Cindy Eeg and Julius and Anne Cinque in the above-referenced matter.

The bulk of the Hilltop letter is devoted to a punchless, *ad hominem* attack on Dr. Eeg that has absolutely nothing to do with the merits of the Petition. I respond to it at the end of this letter, primarily to avoid the impression that silence in the face of a smear campaign connotes agreement.

1. Narrow Scope of the Hearing. With evidently no sense of irony, Hilltop asserts that I "had ample opportunity to present [my] lot size minimization issue before the Board on May 26th." Hilltop Letter 2. But it was Hilltop's counsel that (a) drafted the remand order form the Circuit court directing the Board to approve Hilltop's subdivision plan; (b) vigorously opposed my alternative remand order that omitted this command; and (c) would surely have vigorously opposed any effort by my clients to introduce evidence on May 26th on further minimization of lot sizes. Nor does Hilltop dispute that, given the remand order, it was the common understanding of staff, Board counsel, me and my clients, and the Board Chair, that the hearing on May 26th was about conditions of approval, not the merits of approval/disapproval.

2. Discussion of the Merits. Staff may have been responding to a Commissioner's question post-hearing when the merits were discussed, but the response was unequivocal that Lots 6 and 7 could be reduced in size significantly for reasons completely unrelated to well and septic requirements. Hilltop does not and cannot dispute that this took place and that Staff presented a shifting rationale to defend the configuration of the seven smaller lots. As Hilltop well understands, it achieved a reversal of the prior Board decision on lot minimization with reliance on Staff analysis of

well and septic requirements exclusively. Attached is an excerpt from the Circuit Court's reversal decision, expressly referencing the Staff recommendation that "the seven smaller lots...have been reduced to the minimum size that can be accommodated to include the house, septic systems and well." Opinion at 7 n.4.

3. Lack of Opportunity to Respond. Hilltop provides no basis to doubt that the Plan's opponents have not been afforded a full and fair opportunity to respond to the Staff's shifting rationale and arguments to defend the lot sizes. If there is a newfound "really ugly" justification for increasing lot size above the minimum necessary to comply with health regulations (which is nowhere to be found in the subdivision code or Chapter 2B – Agricultural Land Preservation), the irregular pipestem lots authorized by the Plan are still eminently deserving of that approbation. This is an obvious point I was not given the opportunity to make, as conceded by Hilltop's counsel.

4. Changed Board Findings of Fact. Hilltop has also misstated the problem with Resolution 11-48. The Resolution contains findings on lot minimization that expressly incorporate much of the analysis by Staff on this topic that occurred after the close of a public hearing that was not understood by those attending as embracing this issue:

> The Board asked for a Staff analysis of the potential to further reduce lot sizes. Staff explained that while it was technically possible to reduce the size of proposed Lots 6 and 7, the resulting lot layout would create areas of property that would not be at all conducive to farming and would likely have to be under control of a homeowners association for maintenance, which would be impractical for such a small subdivision.

Resolution 11-48 at 5. This is precisely the sort of conjectural evidence that should not be relied upon by the Board if it has not been subjected to the rigors of public scrutiny. Nor is the possibility of refutation conjectural. Dr. Eeg's affidavit makes clear that "the resulting lot layout" **would** create an area "conducive to farming." Eeg Aff. ¶¶5, 12-13. By relying on Staff's unilateral assessment, the Resolution effectively reconsiders – and reverses – prior findings of fact, made by a predecessor Board on the same factual record.[1]

[1] The Petition's reference to "mere change of mind" cases is in no way inaccurate. A new Board cannot make different findings of fact on the same record as a predecessor Board. What may be appropriate given a court directive on remand, is a different legal conclusion, not different facts. Yet this Board, in Resolution 11-48, has gone well beyond obedience to a court-ordered remand to dress it up with new factual findings that

5. Court of Special Appeals Ruling. Hilltop misleadingly states the results of Petitioner's efforts to correct the overbroad remand order in the Court of Special Appeals. Contrary to the impression Hilltop seeks to create, none of Hilltop's motions to dismiss were granted. Rather, the Court decided on its "own initiative" that the Circuit Court remand order was not an appealable final judgment. A copy of the COSA dismissal order is attached. When an appeal is dismissed on such grounds, the issue for which judicial review was sought is not foreclosed; it can be raised when the judgment is final. Md. Rule 8-131(d); Hudson v. Housing Auth. of Baltimore City, 402 Md. 18, 935 A.2d 395, 400 (2007).

6. Dr. Eeg's Communications with Rebecca Roach. Hilltop interjects into its opposition vague and conjectural argument to the effect that Dr. Eeg has not properly limited his conversations with neighbor Rebecca Roach to veterinary matters. There is in fact no inconsistency between Dr. Eeg's unwillingness to talk to Ms. Roach about the subdivision proceedings and expressing an interest in purchasing land adjacent to his property should she be in a position to convey it at some future point. Further, Dr. Eeg has assured me that his conversation with Ms. Roach took place before there were any constraints on her speaking to him. In any event, whether anything spoken between these individuals is or is not of concern to Hilltop, it is a collateral matter that is wholly irrelevant to the Petition.

7. Bog vs. Spotted Turtle. Equally irrelevant is Hilltop's extended discourse on the turtle matter. The Petition is in no way grounded in any dissatisfaction over the Board's handling of Dr. Eeg's report of a bog turtle on Hilltop Farms. Hilltop nevertheless interjects both a meritless *ad hominem* attack on Dr. Eeg as well as a classic red herring. Dr. Eeg has sworn under oath that a "farm hand," not Rebecca Roach, brought him the turtle in question. The "evidence" to the contrary is not sworn conflicting testimony, but an email in which Ms. Roach's use of the term "I found" could readily be understood a simplified version of "One of my farm hands found and brought to me." Moreover, the precise identity of the "finder" has no intrinsic significance to the email report to DNR and **nothing** to do with the Petition. Equally irrelevant is Dr. Eeg's failure to disclose the scope of the Eeg's friendship with Dr. Pritchard (who in any case Dr. Eeg identified as someone he knew from working with him in the Galapagos Islands). Personal or professional, that relationship does not make Dr. Pritchard's appraisal of the photographs supplied to him inaccurate or even suspect. All that Hilltop's extended discourse reveals is that there is a difference of opinion between Dr. Pritchard and Mr. Smith at DNR about what kind of turtle was photographed. Neither Dr. Pritchard nor Mr.

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ignore its prior factual findings. A membership change does not justify such cavalier disregard of prior Board findings in the same case on the same record.

Smith has actually been to Hilltop Farm to inspect the turtles, and Dr. Eeg did not misrepresent this fact. Indeed, the thrust of Dr. Eeg's testimony was to request that the Board defer action on the Plan until **DNR** could get out to the site and confirm what he is "almost positive" is there – bog turtles, not spotted turtles. Agenda Item #5 (May 26, 2011) Video at 1:18:45 – 1:19:15. Put another way he expressed clear agreement with the concept of future DNR resolution of the issue. That is exactly the course of action anticipated by Condition #21 of the Resolution, to which my clients voiced no objection in their Petition.

The length to which Hilltop has gone to attack my clients and impugn their motives by raising matters irrelevant to the Petition simply underscores that there is no merit to their opposition, as explained in ¶¶1-5 above.

Sincerely yours,

Dave Brown

David W. Brown

/enclosures

cc: Steve Orens, Esq.
Alan Noble, Esq.
David Lieb, Esq., MNCPPC-MC
Richard Weaver, MNCPPC-MC

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

HILLTOP FARMS LIMITED PARTNERSHIP, ET AL *

Petitioners *

v. * Civil Action No. 294120

MONTGOMERY COUNTY PLANNING BOARD *

Respondent *

ENTERED

DEC 11 2008

Clerk of the Circuit Court
Montgomery County, Md.

OPINION AND ORDER

This matter comes before the Court on the Petition of Hilltop Farms Limited Partnership and Charles S. Faller, III who seek reversal of a decision by Respondent Montgomery County Planning Board ("Board") denying Partnership Petitioner's Preliminary Plan Application Number 12005074 ("Plan"). (R. 1-2). The Plan proposed a subdivision that would create eight lots on 232.7 acres of land located in the Agricultural and Rural Open Space ("AROS") Master Plan area which is zoned as the Rural Density Transfer ("RDT") zone. (R. 1-2, 279).

Following two hearings, one on June 8, 2006 and a second on July 19, 2007, the Board unanimously rejected the Preliminary Plan in a decision issued on March 14, 2008. (R. 1). In its decision the Board stated three primary bases for its denial: first, the plan did not comply with the intent of the RDT zone to promote agriculture as the primary land use, second, the plan did not substantially conform to the AROS master plan and third, the size of the proposed lots were not appropriate for the location of the subdivision. (R. 2-5). For the reasons stated herein, the

Montgomery County Code § 2B-11(c)(1), (2) (emphasis added).

While the residential lots proposed in Petitioner's plan are all greater than one acre in size, a review of the record indicates that the lots were indeed the "minimum lot size required" by applicable law.[3] The Zoning Ordinance requires that lots in the RDT Zone be no smaller than 40,000 square feet. *Montgomery County Zoning Ordinance* § 59-C-9.42. All the proposed lots are larger than the minimum required 40,000 square feet. The ordinance does not state a maximum size for lots in the RDT zone. The proposed residential lots also comport with applicable health regulations. During the second day of hearings before the Board on July 19, 2007 Richard A. Weaver of the Development Review Division of the Board stated:

> "These lots are bigger than 40,000 square feet. That is due, in some parts, due to the need to place a house, a well with a radius, and a septic system on that lot, on a lot, and those lots do tend to grow in size. We have run this by our well and septic people. They believe that there is little opportunity to reduce the size of the lots beyond what is shown here. And, part of the Planning Board's role in this is to determine if these lots promote agriculture, or preserve agriculture to some reasonable extent, and the staff report indicates we believe that it does." (R. 81-82)[4].

Furthermore, Gene von Guten of the Department of Permitting Services, the agency responsible for approval of well locations and septic systems,[5] stated in a letter concerning

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[3] While the Court understands that Partnership Petitioner's proposed residential lots are subject to the requirements of § 2B-11©(2) and not those of § 2B-11©(1), it understands the language of ©(2) to refer to zoning and health regulations. Assistant County Attorney Vickie L. Gaul in a letter to the M-NCPPC dated April 30, 2007 stated that irrespective of the difference in language between ©(1) and ©(2) namely, that ©(2) omits a reference to zoning and health regulations, "the APAB has consistently limited its determination of the minimum lot size required to zoning and health regulations." (R. 293-94). Regardless of whether § 2B-11©(2) allows the Board to consider factors other than the applicable zoning and health regulations in determining whether proposed lot sizes are the minimum required, the Board's conclusions of law are erroneous for all the other reasons set forth in this opinion.

4 As the excerpt above indicates the Board's Development Review Division stated in its Staff Recommendation that "the seven smaller lots all meet the minimum size allowed by the zone and have been reduced to the minimum size that can be accommodated to include the house, septic systems and well." (R. 277).

5 *Montgomery County Code* § 27A-3.

Petitioner's plan sent to the Maryland National Capital Park and Planning Commission (M-NCPPC) that "[t]here is no obvious area for any substantial reduction in land area." (R. 512). The letter lists factors that justify the sizes of the proposed residential lots and concludes that the plan was "created to take advantage of the soils that can adequately treat and dispose of sewage. This has resulted in a 'clustered' arrangement of lots and well/septic areas." *Id.*

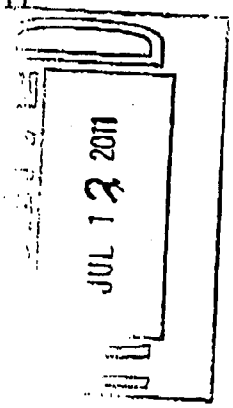
Significantly, the Agricultural Preservation Board (APAB), the agency charged with overseeing the compliance of subject property with the County's easement,[6] in a letter to the M-NCPPC, determined that "the number of lots and their proposed configuration on the Easement Property meet both the Easement restrictions (no more than 8 lots) and the overarching policy goal of the County's Easement Program – maximizing the agricultural potential on the property. Clustering the proposed lots, as opposed to spreading them out over the Easement Property so that there is 1 lot situated every 25 acres, maximizes the agricultural potential of the Hilltop Farm property." (R. 294).

The Court's review of the record indicates that Petitioner's plan is in compliance with the intent of the RDT zone and that the sizes of the proposed lots in Petitioner's plan are the minimum required by applicable law. To the extent that the Board's decision is premised on the assertion that Petitioner did not "present any evidence showing that the Residential Lots are the minimum size possible," (R. 3), it is "arbitrary and capricious" within the meaning of Md. Code, State Government § 10-222(h)(3). The fact that the Board's Answering Memorandum submitted to this Court states that its findings were "mainly based on the lack of evidence in the record that the proposed lots were the smallest necessary," *Answering Memorandum of Respondent* at 10,

6 *See* Montgomery County Code § 2B-2(d)(2) which provides that the APAB has a duty: "[t]o assist the county governing body in reviewing the status of state and county agricultural districts and land under easement."

CINDY EEG, et al.,	*	IN THE
Appellants	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
HILLTOP FARMS LIMITED PARTNERSHIP LLC,	*	September Term, 2011
	*	No. 373
Appellee	*	(CC# 294120)

* * * * * * * * * * * * *



ORDER

Now pending before this Court are the following:

(a) Appellee's Motion for Leave of Court to File a Motion to Dismiss, or in the Alternative, to Strike Appellants' Notice of Appeal;

(b) Appellee's Motion to Dismiss, or in the Alternative, to Strike the Notice of Appeal Filed April 29, 2011;

(c) Appellants' Opposition to Motion for Leave of Court to File a Motion to Dismiss, or in the Alternative, to Strike Appellants' Notice of Appeal;

(d) Appellee's Second Motion to Dismiss Appeal;

(e) Appellants' Opposition to Second Motion to Dismiss Appeal;

(f) Appellants' Opposition to Motion to Strike Appellant's Pleading Filed May 27, 2011;

(g) Appellee's Amended Second Motion to Dismiss Appeal; and

(h) Appellants' Opposition to Amended Second Motion to Dismiss Appeal.

Upon review of the record, it appears that appellants are attempting to appeal an order of the Circuit Court for Montgomery County, dated March 30, 2011, remanding this case to the Montgomery County Planning Board pursuant to this Court's mandate issued in *Montgomery County Planning Board et al. v. Hilltop Farms Limited Partnership, et al.*, No. 2511, September Term, 2008. The circuit court's order, issued pursuant to this Court's mandate, is not a final judgment. With certain exceptions, none of which are applicable in this case, the jurisdiction of this Court is limited to cases in which final judgments have been entered.

Maryland Rule 8-602(a)(1) permits this Court to dismiss an appeal on its own initiative at any time if "the appeal is not allowed by these rules or other law." Accordingly, it is this 8th day of July 2011, by the Court of Special Appeals,

ORDERED that Appellants' appeal dated April 29, 2011 is dismissed; and it is further

ORDERED that Appellee's motions identified in Paragraph 1 (a), (b), (d) and (g) of this order are denied as moot.

FOR A PANEL OF THE COURT

(CHIEF JUDGE'S SIGNATURE APPEARS ON ORIGINAL ORDER)

PETER B. KRAUSER, CHIEF JUDGE

Item #13

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

July 20, 2011

VIA ELECTRONIC MAIL
VIA REGULAR MAIL

The Honorable Francoise Carrier, Chair
The Montgomery County Planning Board
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan No 120050740 – Hilltop Farms
Response to Letter dated July 20, 2011 from Knopf & Brown

Dear Madame Chair:

Given the opposition's litigious propensity and the Maryland case law governing appellate issues in administrative appeals, Hilltop Farms Limited Partnership submits the following in response to the letter of this date submitted on behalf of Dr. and Mrs. Eeg and Mr. and Mrs. Cinque (the Eeg/Cinque Opponents"). I first address Item 5 in the letter, the Court of Special Appeals dismissal of the appeal of the Order of Remand.

On July 8, 2011 the Court of Special Appeals dismissed the Eeg/Cinque appeal because it was "not allowed by these rules or other law." In other words, it was without merit. The now dismissed appeal was filed on April 29, 2011 and on May 17, 2011 the attorney representing the Eeg/Cinque Opponents requested that the Planning Board hearing be postponed because the now dismissed appeal had been filed with the Court of Special Appeals thereby depriving this Board of Jurisdiction. What purpose other than delay could have motivated the filing of an appeal that was destined to be dismissed other than to delay the hearing in order to force Hilltop Farms to sell the thirty acres that Dr. Eeg covets to the Roach Trust so that they could then sell it to him.

Item 6 in the Eeg/Cinque letter of this date refers to communications between Dr. Eeg and Rebecca Roach that were impermissible under a court order. While we agree with opposing counsel that this is a matter of grave concern to Hilltop Farms LP it is not irrelevant to a request for reconsideration that is supported by an affidavit that highlights inconsistent testimony before this Board by the Affiant, Dr. Eeg. We leave it to the Board to judge the veracity of Dr. Eeg's assurances that his conversation with Ms. Roach "took place before there were any constrains" meaning before September 17, 2008.

In Item 7 of the Eeg/Cinque letter opposing counsel claims that "Dr. Eeg has sworn under oath that a "farm hand," not Rebecca Roach brought him the turtle in question." Attempting to malign the " 'evidence' to the contrary," meaning the electronic communications obtained under

the Maryland Public Information Act from the Department of Natural Resources ("DNR"), opposing counsel correctly states that the electronic mail "is not sworn conflicting testimony." Neither was Dr. Eeg's testimony before the Planning Board on May 16th sworn testimony. Although some of us would prefer that testimony be under oath that has not been the Planning Board's practice and neither Dr. Eeg nor anyone else testifying on May 16th presented "sworn testimony." We also leave it to the Board to evaluate the likelihood that Ms. Roach's use of the term "I found" in her email to DNR was merely "a simplified version of 'One of my farm hands found and brought to me" as suggested by opposing counsel.

We brought the "turtle matter" to the board's attention precisely because it is relevant to the reconsideration requests. The feigned certainty with which the "Bog Turtle" testimony was presented to this Board when the witness presenting that testimony should have known that the turtle expert from DNR had categorically told that witness that the turtle in the picture was not a bog turtle is relevant to a reconsideration request supported by the affidavit of that same witness. On May 26th Dr. Eeg had no basis to believe that DNR was going to visit Hilltop Farms, having been told by Scott Smith of DNR that no credible evidence of the existence of habitat on the Hilltop Farms property had been presented to them. Here again, the facts notwithstanding, this Board was requested to delay its decision to allow DNR to visit a site that DNR had no intention of visiting.

As to the narrow scope of the hearing and the board's deliberations, we stand on our earlier response. Clearly the actions of the Planning Board were consistent with the Order of Remand and that Order was precisely in accord with the holding of the court of special Appeals. This board violated no rule, law or court holding by asking staff questions and, of course since the prior decision was to deny the board had to vote to approve and was acting in a manner consistent with its administrative responsibility to discuss the approval before voting.

With apologies for having to respond at this late date,

Sincerely,

Stephen J. Orens

cc: Carol Rubin, Esquire, Associate General Counsel
David Lieb, Esquire, Associate General Counsel
David W. Brown, Esquire
Alan Noble, Esquire
Richard A. Weaver, Acting Supervisor
Hilltop Farms LP

MILES & STOCKBRIDGE P.C.

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We brought the "turtle matter" to the board's attention precisely because it is relevant to the reconsideration requests. The feigned certainty with which the "Bog Turtle" testimony was presented to this Board when the witness presenting that testimony should have known that the turtle expert from DNR had categorically told that witness that the turtle in the picture was not a bog turtle is relevant to a reconsideration request supported by the affidavit of that same witness. On May 26th Dr. Eeg had no basis to believe that DNR was going to visit Hilltop Farms, having been told by Scott Smith of DNR that no credible evidence of the existence of habitat on the Hilltop Farms property had been presented to them. Here again, the facts notwithstanding, this Board was requested to delay its decision to allow DNR to visit a site that DNR had no intention of visiting.

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Hilltop Farms LP

LAW OFFICES OF

KNOPF & BROWN

401 EAST JEFFERSON STREET
SUITE 206
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DAVID W. BROWN

July 20, 2011

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: **Preliminary Plan No. 120050740 – Hilltop Farms**

Dear Chair Carrier:

I write in response to the July 14, 2011 letter from counsel for Hilltop Farms LP ("Hilltop") in opposition to the Petition for Reconsideration I filed on behalf of Peter and Cindy Eeg and Julius and Anne Cinque in the above-referenced matter.

The bulk of the Hilltop letter is devoted to a punchless, *ad hominem* attack on Dr. Eeg that has absolutely nothing to do with the merits of the Petition. I respond to it at the end of this letter, primarily to avoid the impression that silence in the face of a smear campaign connotes agreement.

1. Narrow Scope of the Hearing. With evidently no sense of irony, Hilltop asserts that I "had ample opportunity to present [my] lot size minimization issue before the Board on May 26th." Hilltop Letter 2. But it was Hilltop's counsel that (a) drafted the remand order form the Circuit court directing the Board to approve Hilltop's subdivision plan; (b) vigorously opposed my alternative remand order that omitted this command; and (c) would surely have vigorously opposed any effort by my clients to introduce evidence on May 26th on further minimization of lot sizes. Nor does Hilltop dispute that, given the remand order, it was the common understanding of staff, Board counsel, me and my clients, and the Board Chair, that the hearing on May 26th was about conditions of approval, not the merits of approval/disapproval.

2. Discussion of the Merits. Staff may have been responding to a Commissioner's question post-hearing when the merits were discussed, but the response was unequivocal that Lots 6 and 7 could be reduced in size significantly for reasons completely unrelated to well and septic requirements. Hilltop does not and cannot dispute that this took place and that Staff presented a shifting rationale to defend the configuration of the seven smaller lots. As Hilltop well understands, it achieved a reversal of the prior Board decision on lot minimization with reliance on Staff analysis of

well and septic requirements exclusively. Attached is an excerpt from the Circuit Court's reversal decision, expressly referencing the Staff recommendation that "the seven smaller lots...have been reduced to the minimum size that can be accommodated to include the house, septic systems and well." Opinion at 7 n.4.

3. Lack of Opportunity to Respond. Hilltop provides no basis to doubt that the Plan's opponents have not been afforded a full and fair opportunity to respond to the Staff's shifting rationale and arguments to defend the lot sizes. If there is a newfound "really ugly" justification for increasing lot size above the minimum necessary to comply with health regulations (which is nowhere to be found in the subdivision code or Chapter 2B – Agricultural Land Preservation), the irregular pipestem lots authorized by the Plan are still eminently deserving of that approbation. This is an obvious point I was not given the opportunity to make, as conceded by Hilltop's counsel.

4. Changed Board Findings of Fact. Hilltop has also misstated the problem with Resolution 11-48. The Resolution contains findings on lot minimization that expressly incorporate much of the analysis by Staff on this topic that occurred after the close of a public hearing that was not understood by those attending as embracing this issue:

> The Board asked for a Staff analysis of the potential to further reduce lot sizes. Staff explained that while it was technically possible to reduce the size of proposed Lots 6 and 7, the resulting lot layout would create areas of property that would not be at all conducive to farming and would likely have to be under control of a homeowners association for maintenance, which would be impractical for such a small subdivision.

Resolution 11-48 at 5. This is precisely the sort of conjectural evidence that should not be relied upon by the Board if it has not been subjected to the rigors of public scrutiny. Nor is the possibility of refutation conjectural. Dr. Eeg's affidavit makes clear that "the resulting lot layout" **would** create an area "conducive to farming." Eeg Aff. ¶¶5, 12-13. By relying on Staff's unilateral assessment, the Resolution effectively reconsiders – and reverses – prior findings of fact, made by a predecessor Board on the same factual record.[1]

[1] The Petition's reference to "mere change of mind" cases is in no way inaccurate. A new Board cannot make different findings of fact on the same record as a predecessor Board. What may be appropriate given a court directive on remand, is a different legal conclusion, not different facts. Yet this Board, in Resolution 11-48, has gone well beyond obedience to a court-ordered remand to dress it up with new factual findings that

5. Court of Special Appeals Ruling. Hilltop misleadingly states the results of Petitioner's efforts to correct the overbroad remand order in the Court of Special Appeals. Contrary to the impression Hilltop seeks to create, none of Hilltop's motions to dismiss were granted. Rather, the Court decided on its "own initiative" that the Circuit Court remand order was not an appealable final judgment. A copy of the COSA dismissal order is attached. When an appeal is dismissed on such grounds, the issue for which judicial review was sought is not foreclosed; it can be raised when the judgment is final. Md. Rule 8-131(d); Hudson v. Housing Auth. of Baltimore City, 402 Md. 18, 935 A.2d 395, 400 (2007).

6. Dr. Eeg's Communications with Rebecca Roach. Hilltop interjects into its opposition vague and conjectural argument to the effect that Dr. Eeg has not properly limited his conversations with neighbor Rebecca Roach to veterinary matters. There is in fact no inconsistency between Dr. Eeg's unwillingness to talk to Ms. Roach about the subdivision proceedings and expressing an interest in purchasing land adjacent to his property should she be in a position to convey it at some future point. Further, Dr. Eeg has assured me that his conversation with Ms. Roach took place before there were any constraints on her speaking to him. In any event, whether anything spoken between these individuals is or is not of concern to Hilltop, it is a collateral matter that is wholly irrelevant to the Petition.

7. Bog vs. Spotted Turtle. Equally irrelevant is Hilltop's extended discourse on the turtle matter. The Petition is in no way grounded in any dissatisfaction over the Board's handling of Dr. Eeg's report of a bog turtle on Hilltop Farms. Hilltop nevertheless interjects both a meritless *ad hominem* attack on Dr. Eeg as well as a classic red herring. Dr. Eeg has sworn under oath that a "farm hand," not Rebecca Roach, brought him the turtle in question. The "evidence" to the contrary is not sworn conflicting testimony, but an email in which Ms. Roach's use of the term "I found" could readily be understood a simplified version of "One of my farm hands found and brought to me." Moreover, the precise identity of the "finder" has no intrinsic significance to the email report to DNR and **nothing** to do with the Petition. Equally irrelevant is Dr. Eeg's failure to disclose the scope of the Eeg's friendship with Dr. Pritchard (who in any case Dr. Eeg identified as someone he knew from working with him in the Galapagos Islands). Personal or professional, that relationship does not make Dr. Pritchard's appraisal of the photographs supplied to him inaccurate or even suspect. All that Hilltop's extended discourse reveals is that there is a difference of opinion between Dr. Pritchard and Mr. Smith at DNR about what kind of turtle was photographed. Neither Dr. Pritchard nor Mr.

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ignore its prior factual findings. A membership change does not justify such cavalier disregard of prior Board findings in the same case on the same record.

Smith has actually been to Hilltop Farm to inspect the turtles, and Dr. Eeg did not misrepresent this fact. Indeed, the thrust of Dr. Eeg's testimony was to request that the Board defer action on the Plan until **DNR** could get out to the site and confirm what he is "almost positive" is there – bog turtles, not spotted turtles. Agenda Item #5 (May 26, 2011) Video at 1:18:45 – 1:19:15. Put another way he expressed clear agreement with the concept of future DNR resolution of the issue. That is exactly the course of action anticipated by Condition #21 of the Resolution, to which my clients voiced no objection in their Petition.

The length to which Hilltop has gone to attack my clients and impugn their motives by raising matters irrelevant to the Petition simply underscores that there is no merit to their opposition, as explained in ¶¶1-5 above.

Sincerely yours,

Dave Brown

David W. Brown

/enclosures

cc: Steve Orens, Esq.
Alan Noble, Esq.
David Lieb, Esq., MNCPPC-MC
Richard Weaver, MNCPPC-MC

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

HILLTOP FARMS LIMITED PARTNERSHIP, ET AL	*	
Petitioners	*	
v.	*	Civil Action No. 294120
MONTGOMERY COUNTY PLANNING BOARD	*	
Respondent	*	

OPINION AND ORDER

This matter comes before the Court on the Petition of Hilltop Farms Limited Partnership and Charles S. Faller, III who seek reversal of a decision by Respondent Montgomery County Planning Board ("Board") denying Partnership Petitioner's Preliminary Plan Application Number 12005074 ("Plan"). (R. 1-2). The Plan proposed a subdivision that would create eight lots on 232.7 acres of land located in the Agricultural and Rural Open Space ("AROS") Master Plan area which is zoned as the Rural Density Transfer ("RDT") zone. (R. 1-2, 279).

Following two hearings, one on June 8, 2006 and a second on July 19, 2007, the Board unanimously rejected the Preliminary Plan in a decision issued on March 14, 2008. (R. 1). In its decision the Board stated three primary bases for its denial: first, the plan did not comply with the intent of the RDT zone to promote agriculture as the primary land use, second, the plan did not substantially conform to the AROS master plan and third, the size of the proposed lots were not appropriate for the location of the subdivision. (R. 2-5). For the reasons stated herein, the

Montgomery County Code § 2B-11(c)(1), (2) (emphasis added).

While the residential lots proposed in Petitioner's plan are all greater than one acre in size, a review of the record indicates that the lots were indeed the "minimum lot size required" by applicable law.[3] The Zoning Ordinance requires that lots in the RDT Zone be no smaller than 40,000 square feet. *Montgomery County Zoning Ordinance* § 59-C-9.42. All the proposed lots are larger than the minimum required 40,000 square feet. The ordinance does not state a maximum size for lots in the RDT zone. The proposed residential lots also comport with applicable health regulations. During the second day of hearings before the Board on July 19, 2007 Richard A. Weaver of the Development Review Division of the Board stated:

> "These lots are bigger than 40,000 square feet. That is due, in some parts, due to the need to place a house, a well with a radius, and a septic system on that lot, on a lot, and those lots do tend to grow in size. We have run this by our well and septic people. They believe that there is little opportunity to reduce the size of the lots beyond what is shown here. And, part of the Planning Board's role in this is to determine if these lots promote agriculture, or preserve agriculture to some reasonable extent, and the staff report indicates we believe that it does." (R. 81-82)[4].

Furthermore, Gene von Guten of the Department of Permitting Services, the agency responsible for approval of well locations and septic systems,[5] stated in a letter concerning

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[3] While the Court understands that Partnership Petitioner's proposed residential lots are subject to the requirements of § 2B-11©(2) and not those of § 2B-11©(1), it understands the language of ©(2) to refer to zoning and health regulations. Assistant County Attorney Vickie L. Gaul in a letter to the M-NCPPC dated April 30, 2007 stated that irrespective of the difference in language between ©(1) and ©(2) namely, that ©(2) omits a reference to zoning and health regulations, "the APAB has consistently limited its determination of the minimum lot size required to zoning and health regulations." (R. 293-94). Regardless of whether § 2B-11©(2) allows the Board to consider factors other than the applicable zoning and health regulations in determining whether proposed lot sizes are the minimum required, the Board's conclusions of law are erroneous for all the other reasons set forth in this opinion.

4 As the excerpt above indicates the Board's Development Review Division stated in its Staff Recommendation that "the seven smaller lots all meet the minimum size allowed by the zone and have been reduced to the minimum size that can be accommodated to include the house, septic systems and well." (R. 277).

5 *Montgomery County Code* § 27A-3.

Petitioner's plan sent to the Maryland National Capital Park and Planning Commission (M-NCPPC) that "[t]here is no obvious area for any substantial reduction in land area." (R. 512). The letter lists factors that justify the sizes of the proposed residential lots and concludes that the plan was "created to take advantage of the soils that can adequately treat and dispose of sewage. This has resulted in a 'clustered' arrangement of lots and well/septic areas." *Id.*

Significantly, the Agricultural Preservation Board (APAB), the agency charged with overseeing the compliance of subject property with the County's easement,[6] in a letter to the M-NCPPC, determined that "the number of lots and their proposed configuration on the Easement Property meet both the Easement restrictions (no more than 8 lots) and the overarching policy goal of the County's Easement Program – maximizing the agricultural potential on the property. Clustering the proposed lots, as opposed to spreading them out over the Easement Property so that there is 1 lot situated every 25 acres, maximizes the agricultural potential of the Hilltop Farm property." (R. 294).

The Court's review of the record indicates that Petitioner's plan is in compliance with the intent of the RDT zone and that the sizes of the proposed lots in Petitioner's plan are the minimum required by applicable law. To the extent that the Board's decision is premised on the assertion that Petitioner did not "present any evidence showing that the Residential Lots are the minimum size possible," (R. 3), it is "arbitrary and capricious" within the meaning of Md. Code, State Government § 10-222(h)(3). The fact that the Board's Answering Memorandum submitted to this Court states that its findings were "mainly based on the lack of evidence in the record that the proposed lots were the smallest necessary," *Answering Memorandum of Respondent* at 10,

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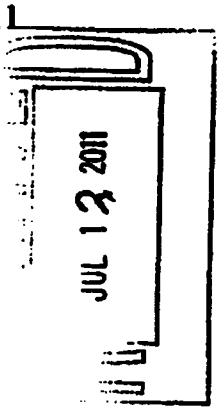
6 *See* Montgomery County Code § 2B-2(d)(2) which provides that the APAB has a duty: "[t]o assist the county governing body in reviewing the status of state and county agricultural districts and land under easement."

CINDY EEG, et al.,	*	IN THE
	*	COURT OF SPECIAL APPEALS
Appellants	*	OF MARYLAND
v.	*	September Term, 2011
HILLTOP FARMS LIMITED PARTNERSHIP LLC,	*	No. 373
Appellee	*	(CC# 294120)



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ORDER

Now pending before this Court are the following:

(a) Appellee's Motion for Leave of Court to File a Motion to Dismiss, or in the Alternative, to Strike Appellants' Notice of Appeal;

(b) Appellee's Motion to Dismiss, or in the Alternative, to Strike the Notice of Appeal Filed April 29, 2011;

(c) Appellants' Opposition to Motion for Leave of Court to File a Motion to Dismiss, or in the Alternative, to Strike Appellants' Notice of Appeal;

(d) Appellee's Second Motion to Dismiss Appeal;

(e) Appellants' Opposition to Second Motion to Dismiss Appeal;

(f) Appellants' Opposition to Motion to Strike Appellant's Pleading Filed May 27, 2011;

(g) Appellee's Amended Second Motion to Dismiss Appeal; and

(h) Appellants' Opposition to Amended Second Motion to Dismiss Appeal.

Upon review of the record, it appears that appellants are attempting to appeal an order of the Circuit Court for Montgomery County, dated March 30, 2011, remanding this case to the Montgomery County Planning Board pursuant to this Court's mandate issued in *Montgomery County Planning Board et al. v. Hilltop Farms Limited Partnership, et al.*, No. 2511, September Term, 2008. The circuit court's order, issued pursuant to this Court's mandate, is not a final judgment. With certain exceptions, none of which are applicable in this case, the jurisdiction of this Court is limited to cases in which final judgments have been entered.

Maryland Rule 8-602(a)(1) permits this Court to dismiss an appeal on its own initiative at any time if "the appeal is not allowed by these rules or other law." Accordingly, it is this 8th day of July, 2011 by the Court of Special Appeals,

ORDERED that Appellants' appeal dated April 29, 2011 is dismissed; and it is further

ORDERED that Appellee's motions identified in Paragraph 1 (a), (b), (d) and (g) of this order are denied as moot.

FOR A PANEL OF THE COURT

(CHIEF JUDGE'S SIGNATURE APPEARS ON ORIGINAL ORDER)

PETER B. KRAUSER, CHIEF JUDGE

MCP-Chair

From: Joy Johnson [Joy@knopf-brown.com] **Sent:** Wed 7/20/2011 3:32 PM
To: MCP-Chair
Cc: 'David W. Brown'; sorens@milesstockbridge.com; anoble@budownoble.com; Weaver, Richard; Lieb, David; laserveteeg@netzero.net
Subject: Letter from David Brown re Preliminary Plan 120050740 - Hilltop Farm
Attachments: Ltr to Carrier re 120050740.pdf(681KB)

Dear Chair Carrier,

Attached please find a letter with attachments from David Brown, in response to the July 14, 2011 letter from counsel for Hilltop Farms LP. Please place this letter in the permanent file and distribute it to all parties. *It is necessary for this letter to be distributed to all Boardmembers immediately as there is a strong possibility the matter will be on tomorrow's agenda.*

Please confirm receipt of this letter, and confirm its distribution.

Sincerely yours,

Joy Johnson

Office Administrator

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